THE CIVIL SERVICE IN THE MODERN STATE

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The International Congress of the Administrative Sciences

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THE CIVIL SERVICE IN THE MODERN STATE

A COLLECTION OF DOCUMENTS

Published under the auspices of the International Congress of the Administrative Sciences

BY LEONARD D. WHITE, PH.D.
Professor of Public Administration
The University of Chicago

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TO

RICHARD PEREGRINE WHITE

PREFACE

The International Congress of the Administrative Sciences held its first meeting in Brussels in 1910. The second meeting, planned for 1914, was interrupted by the World War, and was eventually held in Brussels in 1923; the third Congress took place in Paris in 1927. These conferences, which bring together a most distinguished group of high administrative officials, actively engaged in the conduct of the administrative services of the leading countries of the world, have already begun to form a doctrine of public administration, although the differences in types and conditions of administration vary greatly from one nation to another.

The creative activity of the Congress has been notably accelerated since 1928 by the publication of the *Revue internationale des sciences administratives*, a journal which has already taken high rank under the devoted leadership of MM. Jacquart, Henry, Warnotte, Lespes, Lesoir, and Carpentier.

In the hope that the creative power of the Congress might be even more highly developed, the author of this volume, shortly after the third Congress, proposed to Count Torre-Velez, president of the Permanent Commission of the Congress, to M. Paul de Vuyst, vice-president, and to M. Edmond Lesoir, secretary-general of the Permanent Commission, that a collection of the fundamental civil service documents be made in collaboration with scholars of different countries. The proposal was accepted, and steps were taken at once to collect and publish the material.

This volume is a co-operative work in every sense of the word. It could not have been completed without the generous assistance of the scholars whose names appear on the title-page, and full acknowledgment is here made to each of them. To the author, the labor of translation, editorial revision, and publication has been more than recompensed by the pleasant contacts made with his collaborators.

Special acknowledgment must be made to M. Edmond Lesoir, secretary-general of the International Congress, for his unfailing assistance at every stage of the work. M. Lesoir brought help which was invaluable and always with a ready generosity which made his co-operation a constant satisfaction.

To the University of Chicago and its Social Science Research Committee, the author expresses his gratitude for the financial assistance which made publication possible.

It is a matter of deep regret that owing to one circumstance or another, it was impossible to secure the necessary documents from countries whose civil service is of great interest and importance, countries such as Holland, Spain, Russia, Czechoslovakia, Poland, and others. In the case of the states which are represented in this collection, the reader must understand that the documents are selected and do not purport to be complete. In most cases, much additional material was offered which space limitations made it impossible to use. These documents, however, do illustrate the general pattern of the organization of the modern civil service.

Imperfect as the collection must be, through no fault of the author's collaborators but rather from consideration of available time and space, it is hoped that it may serve to stimulate further co-operative enterprises of a scholarly nature under the auspices of the International Congress of the Administrative Sciences, and to strengthen and confirm the contribution which the Congress makes to the science and art of public administration.

L. D. W.

Chicago
July, 1930

INTRODUCTION

I

As ancient an institution as the civil service deserves a volume recording its history, its contributions to civilization, its great figures and crises. Although the civil official played a part in the earliest recorded cultures of the Near East, he hardly came into his own until the establishment of the great Egyptian Empire; and if the orator displaced the bureaucrat in the glowing days of Athenian splendor, the latter came into his own during the long centuries of Roman hegemony. Feudalism destroyed the impressive civil structure of the Roman state, destroyed, indeed, the state and office itself, which was submerged beneath a system of personal relationship based on land tenure. Public life diminished to an almost imperceptible minimum, and generation succeeded generation wholly unconscious of the vast range of activities which distinguish the modern state.

The modern civil service developed with the national state and takes its form and structure from the changing ideals of the national state as well as from the advances in technical knowledge characteristic of the last half-century. Richelieu in France, Henry VIII and Elizabeth in England, and the Great Elector are among the chief architects who reconstructed the concept of the state, of office, of civil life, and of permanent officials out of the débris of the feudal system.

But the national state which reinvigorated the civil service was an absolute state, ruled by monarchs who recognized no collaborators in their subjects. The English revolution of 1688 and the French Revolution, asserting successfully the right of subjects to share at least in powers of government, set the problem of making a bureaucracy responsive to a constantly enlarging public without chaining it a slave to the chariot of politicians. The nineteenth century was largely devoted to discovering the answer to this question.

England shifted command of its civil service from king to Parliament; the opportunities for abuse were so exploited by her politicians that the service was first disenfranchised and then sought to be protected by corrupt practices acts. Finally, the historian Macaulay with the aid of Gladstone persuaded a reluctant queen and Parliament to abandon the personal nomination of favorites of the ruling party in favor of an impersonal method of selection which in 1870 resulted in acceptance of the principle of open, competitive examination as the chief mode of access to public office. The civil service, once the servant of the sovereign, then of the party, thus became the servant of the nation.

The unsettled political life of France during the nineteenth century did not wholly obscure the emergence of a strong national civil service. The necessity of guarding it from the shifting tides of party success was early understood by thoughtful Frenchmen; and it fell to a statesman whose name is universally known in America, M. de Tocqueville, to propose to the Chamber of Deputies for the first time in 1842 the grant of a legal status to employees of the state, hitherto subject to a régime of decrees without stability or uniformity. In 1845, by a majority of only a single vote the Chamber refused its assent, and although, as related by M. Alexandre Lefas in *L'Etat et les fonctionnaires*, it has often been invited to grant a minimum of guaranties, it has been unable to agree on collateral controversial issues, especially the right of officials to associate.

France has in fact sought a powerful and responsible civil service not by statutory regulation of the various incidents of service but by a high degree of centralization, a remarkable system of education for the technical branches, and a professional *esprit de corps* fortified by the system of guaranties gradually evolved by the Conseil d'Etat.

The civil service of Germany set its tradition generations ago under the leadership and inspiration of Prussia, and only in the present decade has it been forced to adapt its tradition to the conditions of a democratic state. The special position held by the service in the scale of social values has apparently not been seriously affected, but the conditions of service in a democracy may prove to be far different and far more difficult than in the empire.

In the United States the demands of a democracy personified by Andrew Jackson created a type of administration bound by the closest ties to the electorate. The administration thus became responsive to opinion at the cost of subordinating it to parties, which in turn boldly exploited administration for party profit. Such statesmen as Clay, Webster, and Calhoun denounced this outcome but without avail. Finally Carl Schurz, who brought to America something of the German tradition, Dorman B. Eaton, who reported on the new era in England, and George William Curtis, who sensed the danger of spoils to democracy itself, with many others, succeeded in educating public opinion to demand a public service which should be responsible to the interests of the people, not the parties. Congress reluctantly responded to this demand in 1883, many states and most cities in the years following.

In one way or another, therefore, the bureaucracies which comprise the modern public service have shifted their allegiance from monarchs, first to politicians and then to the state, for the common weal. In varying degrees the sense of responsibility to the considered opinion of the people as organized in the state has penetrated into and given power to the civil service itself, perhaps nowhere more fully than in Great Britain.

II

As the civil service thus transferred its allegiance, its power was increasing; and with the opening of the twentieth century a second problem opened up—how to make and keep the bureaucracy efficient without enabling or inviting it to trench on the rights of citizens.

For a half-century there has been a notable and universal extension of the area which by common consent is to be occupied by the state. This area is in part a service area, wherein the state carries letters and parcels and acts as banker and transmitter of funds, or builds canals and highways and air fields, or drains swamps and irrigates lands in order to extend cultivation, or supports vast programs of education and public health. It is also in part an area of regulation, wherein the state curbs the free play of industrial competition, forbids the making of work contracts at less than a specified wage, requires the installation of safety devices, and fixes the rate of return of corporations affected by a public interest.

The extension of the area of state activity inevitably points to an increase in the mere size of the civil service; it also increases in a much sharper ratio the points at which officials and citizens come into contact with each other; and so far especially as the regulative functions of the state are concerned, the number of prohibitions and restrictions on personal conduct.

Now both in the case of the service and of the regulative functions, there is ordinarily concerned an active group of citizens who have become aware of some social maladjustment, and who have prevailed upon the appropriate authority to enact legislation and provide administration intended to secure a better adjustment. Urged on by these groups, and by the growing desire of administrators to perform effectively the duties imposed upon them, administrative power has developed rapidly in recent decades. The rule-making power was quietly extended in Great Britain and other Anglo-Saxon jurisdictions until it approached something of the stature of its continental analogue (see Carr, Comer, Hart); the power of determining property and personal rights also expanded, marching over into territory occupied by the courts, until finally the Lord Chief Justice of England, in his *New Despotism*, undertakes to expose "a well-thought-out plan to clothe the department with despotic powers."

In America we are not yet deeply concerned with the overbearing power of bureaucracy; we are in fact still constructing our bureaucracy; but the tendencies noted in such legislation as the Federal Trade Act are of significance in this connection.

The rights of citizens, even as defined in written constitutions, are far from specific. They were originally the product of a general opinion framed on the background of a particular social and economic system; and as that background is modified, especially with the rapidity and thoroughness of the present day, general opinion as to the necessary scope of individual right will inevitably change. The right of administrative officials to interfere in one's freedom to act is now universally conceded at points which fifty years ago would have been impossible (traffic regulation, sale of narcotics, inspection of food, etc.); but at other points the interference is resented by a minority, large or small as the case may be (sale of intoxicating liquor, medical inspection of school children, etc.).

In short, as the scope of state activity widens, the civil service grows in number and power; as the complexity of our Western civilization increases, the occasion for the regulative intervention of the state multiplies; the rights of citizens, defined in constitutions and custom, stay the hand of the bureaucracy at a certain point, but at a moving point, a point now fixed at the end of the first quarter of the twentieth century to allow a scope for official control over private conduct which has not been attained since 1789.

III

Meanwhile the civil service has become conscious of itself. Commencing in the late years of the nineteenth century, it began to organize associations, many of which soon came to wear the aspect of trade-unions. They in turn combined into larger units, formed federations, and often affiliated with industrial organizations. The motivation of these groups has been primarily economic—higher wages and salaries, improved working conditions. To a certain degree, however, the motivation has been of a different order, seeking a new form of state organization in which the civil service would conduct administration for the common good.

Organization has been in the social atmosphere of the twentieth century, and it would have been surprising if employees of the state had not been affected. It must be said that the attitude of public authorities, ministers, and bureau chiefs has too often been such as to invite organization by employees for protective purposes.

M. Georges Cahen sets forth the complaints of civil servants in France (*Les fonctionnaires*); and M. Maxime Leroy develops the philosophy of syndicalism which would set these faults of bureaucracy to rights. If more were known of the Russian service since the Revolution, it might be possible to speculate on the efficacy of an autonomous organization controlling a public service for the general good. M. Leroy states the case boldly:

> . . . . Free, officials will be responsible; responsible, they will be active, will reflect upon their work, to the profit of the public service.
>
> Life, initiative in the public service can not depend upon regulation by authority; of this bureaucratic red tape and hierarchical control have given us a full lesson.
>
> The problem can be put only in the following terms: to find an organization such that spontaneously and by inherent necessity, the services will operate with intelligence, competence, initiative, and vivacity. To secure these ends, the field should be left free to liberty and technical capacity.

Less doctrinaire than their colleagues across the channel, the English civil servants have sought more immediate ends through their associations; and in the institution of the Whitley councils and the Industrial Court have adapted to the public service agencies of conciliation and arbitration of deep significance. Almost by indirection, the organized British service has advanced to a position where it is entitled to discuss service problems of many types; and possibly has set in motion practices which will eventuate in a custom of employee participation in the conduct of responsible affairs.

The embarrassments of the dual allegiance which the existence of strong service organizations bring to their members were marked in Great Britain by the events of the general strike of 1926. Without exception the service unions refrained from joining the strike; but they supported the strike from their funds, and were advised by their leaders to refrain from performing any but their normal duties. The Financial Secretary of the Treasury observed on the floor of the House of Commons:

> When a great crisis occurs like that through which we have just come, and when a number of men engaged in the service of the State are also connected with great trade associations in the country, it is quite obvious that those men are placed in a very difficult position, because there is then brought into play a conflict between two allegiances—the allegiance which they owe to the Government and the allegiance which they owe to the trade organization to which they belong.

In Germany, in America, in Belgium, in Italy, and in other countries as well as Great Britain and France, an organized civil service has emerged and is surveying the administrative machine of which it is a part. In one direction it seeks to develop its professional competence, through such devices as the academies in Germany, the Further Education Program in England, and the Institute of Public Administration; in another direction it seeks to improve its economic status and security of tenure by collective bargaining with its employer.

All this is surprisingly novel. Faced with a situation for which precedents do not exist, the state has sought in varying degrees to organize its public service and to define the status, rights, and obligations of its servants, both individually and collectively.

The documents which are included in this collection illustrate the ways and means by which the state seeks this end. They are not complete for any state, but as a whole they serve to make reasonably clear both the accepted residue of many experiments in former decades and also the devices which the present generation is inventing.

Thus they make clear the universal agreement upon open competitive examination as the normal method of entry into the public service. They reflect the great care with which, in highly developed bureaucracies such as Austria before the war, the personal rights of the civil servant were guaranteed in elaborate provisions defining the forms and methods of discipline. They show the concern of the state to maintain a standard of official conduct which will not compromise the honor or integrity of the service. They suggest the special courses of training developed especially for the technical branches of the service. They indicate the concern of the state to free the service from the interference of politics.

Perhaps of greater interest are the documents revealing some of the newer experiments in the management of the civil service. Thus in Great Britain, the joint councils which seek to adjust claims of civil servants, the Industrial Court which arbitrates certain classes of disagreements between the official and staff sides, the sliding-scale bonus which correlates wages and the cost of living, the prohibition introduced in 1927 upon affiliation of civil service unions with outside unions or with political parties, are all full of interest and significance.

In France, experimentation has been less marked in the last decade; in Germany, the works councils and civil service committees, the civil service academies and the attitude of the German courts on the right of officials to strike deserve especial attention; in Italy, the Fascist organization of the public service displays a solicitude for the attitude of its members which is repeated in Germany, and which is characteristic of a new régime. Belgium has gone far in post-war years to unify her service regulations, and also has experimented with joint councils.

The Swiss legislation contains an unusual provision fixing the term of office at three years, while it, too, has experimented with a personnel office and an advisory joint commission to deal with questions of principle concerning personnel and salaries. Under the leadership of Professor Negulesco, Roumania has established the important Roumanian Institute of the Social Sciences, and inaugurated the important journal *Drept public*.

In short, without attempting to indicate the points at which the various public services are creating new forms and methods, it may be said that the decade following the war was both one of great difficulty and of great promise. To work out the implications of the Whitley councils in Great Britain is the task of not one decade but many; to re-establish the German civil service in a democracy without destroying the admirable qualities of integrity and technical competence which characterized the Empire is equally the task of decades; to introduce unity into services in many countries which have cherished traditions of departmental independence is perhaps the task of generations.

This book assuredly does not contain the answers to these problems; but it does present, for the most part for the first time, the documentary evidence of the adjustments which are in progress. To their solution the deliberations of the International Congress of the Administrative Sciences and the administrative skill of its members in their several official responsibilities are certain to contribute much.

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THE CIVIL SERVICE OF GREAT BRITAIN

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INTRODUCTION

The modern British civil service dates from 1855, when by Order in Council was established a civil service commission and an elementary system of pass examinations. From that day to this the civil service of Great Britain has been organized and regulated by Orders in Council and other executive acts rather than by statute.

Statutes have contributed something, however, to the construction of the civil service. Thus the Act of Settlement (12 and 13 Will. III, c. 2) undertook to separate administrative officials from parliamentary officeholders. An Act of 1782 (22 Geo. III, c. 44) undertook to protect the service from political influence by disenfranchising a large proportion of officeholders. An Act of 1809 (49 Geo. III, c. 118) prohibited certain forms of corruption.

These statutes were indifferently executed and, in fact, did not presume to create the highly organized, responsible service which Great Britain possesses today. The modern service rests fundamentally on executive action.[1]

The evolution of the laws and regulations on which the modern service rests is sketched briefly in the following survey.

The philosophical basis of the modern British civil service was laid down by Macaulay in his famous report on selection of probationers for the Indian service, in which were formulated the ideas of open competition and university training, foreshadowing a civil service career worthy of the best talent of England (see Document No. 1).

The Order in Council of May, 1855, prescribed a system of pass examinations to be agreed to by the department and administered by the civil service commission created in the same order. In 1859 Parliament enacted new pension legislation (22 and 23 Vic., c. 26, clause 4) whose benefits were restricted to civil servants entering with the certificate of the civil service commission, thus effectively closing the door to irregular permanent appointments.

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[1] Note by way of exception the Sex Disqualification Act, 1919 (9 and 10 Geo. V, c. 71; the Trade Disputes Act, 1927 (17 and 18 Geo. V, c. 22).

Intimations from the Treasury in 1860 secured improvement in the examination system by requiring limited competition; finally, in 1870, an Order in Council of fundamental importance laid down the rule of open competitive examination as the normal method of entrance into the permanent service, and strengthened Treasury influence over the establishments.

For the next generation the service passed through a transition period, in which the authority of the Treasury over personnel administration was gradually enlarged and in which the chief problem was that of proper classification. The traditional upper and lower divisions were already established, but the line between the two divisions was drawn with little attention to logic or sound administrative practice, and the bifurcation of the service itself was roundly denounced in some quarters. Various modifications were introduced after the Playfair Committee Report (Parliamentary Papers, 1875, Vol. 23,) and after the Ridley Committee Report (Parliamentary Papers, 1887, Vol. 19; 1888, Vol. 27; 1889, Vol. 21; 1890, Vol. 27). Finally, in 1910, the various Orders in Council were consolidated and reissued in the basic Order in Council of January 10, 1910, which with important post-war amendments is still partly in force (see Document No. 2).

The developments during and since the war have been of deep significance, and the post-war service differs from the pre-war service in many important aspects. In 1919 was established the system of Whitley Councils for the administrative and Legal Departments (see Document No. 3), which has been instrumental in introducing significant changes in the organization and classification of the service (see Document No. 4), in methods of meeting changes in the cost of living (see Document No. 5), in handling promotions (see Document No. 6), in further education of civil servants, and which has been active in operating the machinery of arbitration, first established in 1917, abandoned in 1922, and re-established in 1925 (see Documents Nos. 7–8).

One of the leading changes in the post-war civil service in Great Britain is the full recognition of service unions and associations; but in 1927 the provisions of the Trade Disputes and Trade Union Act forbade civil service organizations to affiliate with industrial unions or with political parties (see Document No. 9). The character of a large civil service trade union is revealed in the constitution of such a body as the Union of Postal Workers, the Civil Service Clerical Association, or the Association of Officers of Taxes. A unique legally established organization is the Police Federation, whose constitution is described in 9 and 10 Geo. V, c. 46 (1919).

The fundamental bases of the service, open competition, permanent appointment, treasury control, advancement by merit, sharply separated divisions with rigid university requirements for entrance into the higher division, freedom from political considerations, remain untouched by the events arising out of the war.

The documents included in the following collection comprise:

1. Selections from the Macaulay Report, 1853.
2. Order in Council of 1910; Order in Council of 1920; General Regulations of 1923.
3. Constitution of the Whitley Council for the Administrative and Legal Departments.
4. Extracts from the Report of the Whitley Council on Re-organization.
5. Report of the Cost of Living Committee.
6. Report of the Promotions Committee.
7. Agreement of 1925 Concerning Arbitration.
8. Constitution of the Industrial Court.
9. Section 5 of the Trade Disputes and Trade Union Act of 1927.

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DOCUMENT NO. 1

SELECTIONS FROM THE MACAULAY REPORT

This report, written in 1853 by a distinguished committee headed by the historian Macaulay, laid down the basis for future examination for appointment to the service of the East India Company. Its recommendations were adopted for the Indian service, and substantially without change were approved for the open competitive examination for the higher ranks established in 1870 by Order in Council. The principles of the report remain today the basis of the selection of the higher civil servants, and still pass without serious challenge.

The Royal Commission of 1912–14 expressed its confidence in the Macaulay scheme, but recommended further inquiry into the choice of subjects and the allocation of weights. Important modifications in the respective importance attached to various subjects were made, and a supplementary viva voce examination was introduced. The report of this committee may be found in Parliamentary Papers, Cd. 8657 (1917).[1]

To the Right Honourable Sir Charles Wood, Bart., M.P., etc., etc.

Sir, ... It is undoubtedly desirable that the Civil Servant of the Company should enter on his duties while still young; but it is also desirable that he should have received the best, the most liberal, the most finished education that his native country affords. Such an education has been proved by experience to be the best preparation for every calling which requires the exercise of the higher powers of the mind; nor will it be easy to show that such preparation is less desirable in the case of a Civil Servant of the East India Company than in the case of a professional man who remains in England. . . . .

The change which we propose will have one practical effect, to which we attach much importance. We think it desirable that a considerable number of the Civil Servants of the Company should be men who have taken the first degree in arts at Oxford or Cambridge. At present the line is drawn as if it had been expressly meant to exclude bachelors of those Universities. . . . .

Here arises at once a question of the gravest importance. Ought the examination to be confined to those branches of knowledge to which it is desirable that English gentlemen who mean to remain at home should pay some attention?—or ought it to extend to branches of knowledge which are useful to a servant of the East India Company, but useless, or almost useless, to a person whose life is to be passed in Europe?

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[1] The substance of the report is reprinted in E. M. Sait and D. P. Barrows, *British Politics in Transition*, pp. 64–74. New York: World Book Co., 1925.

Our opinion is, that the examination ought to be confined to those branches of knowledge to which it is desirable that English gentlemen who mean to remain at home should pay some attention. . . . .

Nor do we think that we should render any service to India by inducing her future rulers to neglect, in their earlier years, European literature and science, for studies especially Indian. We believe that men who have been engaged, up to one or two and twenty, in studies which have no immediate connection with the business of any profession, and of which the effect is merely to open, to invigorate, and to enrich the mind, will generally be found, in the business of every profession, superior to men who have, at eighteen or nineteen, devoted themselves to the special studies of their calling. . . . . We have, with an anxious desire to deal fairly by all parts of the United Kingdom, and by all places of liberal education, framed the following scale, which we venture to submit for your consideration:

English language and literature:	
Composition	500
History	500
General literature	500
Greek	750
Latin	750
French	375
German	375
Italian	375
Mathematics, pure and mixed	1,000
Natural sciences	500
Moral sciences	500
Sanskrit	375
Arabic	375
	6,875

It seems to us probable, that of the 6,875 marks, which are the maximum, no candidate will ever obtain half. A candidate who is at once a distinguished classical scholar and a distinguished mathematician will be, as he ought to be, certain of success. A classical scholar who is no mathematician, or a mathematician who is no classical scholar, will be certain of success, if he is well read in the history and literature of his own country. A young man who has scarcely any knowledge of mathematics, little Latin, and no Greek may pass such an examination in English, French, Italian, German, geology, and chemistry that he may stand at the head of the list. . . . .

When the result of the examination has been declared, the successful candidates will not yet be Civil Servants of the East India Company, but only

Civil Servants elect. It appears from the fortieth clause of the Act to be the intention of the Legislature that, before they proceed to the East, there should be a period of probation and a second examination.

In what studies, then, ought the period of probation to be passed? And what ought to be the nature of the second examination?

. . . .

The four studies, then, to which, in our opinion, the probationers ought to devote themselves during the period of probation, are, first, Indian history; secondly, the science of jurisprudence; thirdly, commercial and financial science; and fourthly, the oriental tongues.

The time of probation ought not, we think, to be less than one year, nor more than two years.

There should be periodical examinations, at which a probationer of a year's standing may pass, if he can, and at which every probationer of two years standing must pass, on pain of forfeiting his appointment. This examination should, of course, be in the four branches of knowledge already mentioned as those to which the attention of the probationers ought to be especially directed.

DOCUMENT NO. 2

THE ORDER IN COUNCIL JANUARY 10, 1910 (SELECTIONS). THE ORDER IN COUNCIL, JULY 22, 1920. GENERAL REGULATIONS, APRIL 6, 1923

The Order in Council of January 10, 1910, which is reprinted in full in Robert Moses, *The Civil Service of Great Britain*, has been supplanted in large part by post-war Orders in Council and by Whitley agreements. It is not easy to state precisely what sections remain in force, wholly or partially, but the rules applicable to all permanent officers have been included here, as well as the rule governing promotion from the old Second Division to the First Division, although it was expected that this rule would be modified after the war.

The Order in Council of July 22, 1920, greatly extended the power of the Treasury over establishments, especially in Article 6 authorizing the Treasury to make "regulations for controlling the conduct of His Majesty's civil establishments, and providing for the classification, remuneration, and other conditions of service of all persons employed therein." The regulations issued on April 6, 1923, largely replace the older Order in Council of January 10, 1910, and reflect the special situation arising from the war.

Order in Council, January 10, 1910

PART II. RULES APPLICABLE TO ALL PERMANENT OFFICERS IN HIS MAJESTY'S CIVIL ESTABLISHMENTS

12. It shall be competent for the Treasury to direct, should they see cause, that inquiry be made at intervals of not less than five years into the pay and numbers of officers employed by any Department of State.

13. Attendance Books shall be kept in every Department for the purpose of recording the times of arrival and departure of persons employed therein.

14. Officers are required to attend not less than seven hours a day, but they shall be allowed a half-holiday on alternate Saturdays, provided that the Head of their Department is satisfied that the progress of public business will not be prejudiced thereby.

15. It shall be competent for the Head of any Department to call upon any officer of such Department to retire at any time after reaching the age of sixty on such pension as by the length of his service he is qualified to receive.

Retirement shall be compulsory for every officer on attaining sixty-five years of age. But in special cases the Treasury may, at the instance of the Head of a Department, extend an officer's employment for a further period not exceeding five years, on being satisfied that such officer's retirement at 65 would be detrimental to the interest of the Public Service.

16. Any officer seeking a seat in the House of Commons shall resign his office so soon as he issues his address to the electors, or in any other manner publicly announces himself as a candidate.

17. No officer shall be allowed to accept any part in the management of any society, or any trading, commercial, industrial, or financial firm or company which would require the attendance of such officer at any time between the hours of 10 A.M. and 6 P.M.

18. An annual increment of salary shall not be allowed to any officer at the date at which it would in ordinary course become due without a certificate from his immediate superior, countersigned by the Head of the Department, or such person as he may designate for the purpose, to the effect that the service of such officer during the year preceding the date of such certificate has been approved.

Provided that if, at the date when the increment would in ordinary course become due, the certificate cannot be given, the Head of the Department may specify a period from the expiration of which, if the officer's service in the meanwhile has been approved, the increment may be allowed, and may from time to time extend the period so fixed. If the officer's service after the grant of the deferred increment shall continue satisfactory, the Head of the Department may, if and when he thinks fit, increase the salary to an amount not exceeding that at which it would have stood if no increment had been withheld or deferred. Every such increase shall be reported to the Comptroller and Auditor-General.

19. Sick leave may be granted to any officer by the Head of his Department subject to the following conditions, viz:

1) After two days' continuous absence, a certificate by a duly qualified medical practitioner shall be furnished stating the cause of such absence.
2) If the number of days during which any officer is absent in any year without such medical certificate shall exceed seven in the aggregate, the number of days of absence in excess of seven shall be deducted from the amount of ordinary annual holidays which may be allowed under this Order.
3) Continuous sick leave on full pay shall not be granted for any period longer than six months, but at the expiration of such six months the Head of the Department may at his discretion grant further leave on half-pay for any period not exceeding six months. After twelve months'

continuous sick leave, no officer shall receive any salary, except with the consent of the Treasury, who may, in special circumstances, allow payment of salary to an officer during any further period of sick leave at a rate not exceeding the amount of pension (if any) for which, at the expiration of twelve months' sick leave, the officer would have been qualified.

4) When the sick leave granted to any officer shall have amounted in the aggregate to twelve months during any period of four years or less, and it is desired to grant to him any further sick leave during such period, the case shall be reported to the Treasury, who shall decide what payment (if any) shall be made to him in respect of salary during such further sick leave.

. . . .

RULES APPLICABLE TO THE WHOLE OF THE SECOND DIVISION

. . . .

36. A Clerk shall not be promoted from the Second Division to any post carrying a maximum salary exceeding 500 pounds a year, or leading in the ordinary course of promotion to posts of which the maximum salary exceeds 500 pounds a year, without a special certificate from the Commissioners, to be granted exceptionally, after not less than eight years' service, upon a special recommendation from the Head of the Department and with the approval of the Treasury; and every such promotion shall be published in the London Gazette, with a note of such recommendation, certificate, and approval, and shall have effect from the date of such publication.

37. (i) Redundant Second Division Clerks may be transferred from one Department to another without reference to their age or the amount of salary of which they are in receipt.

(ii) Except in the case of redundancy no Clerk of the Second Division shall be so transferred without the consent of the Commissioners.

(iii) The consent of the Commissioners and the approval of the Treasury shall be required to the making redundant of any Second Division Clerk who has been appointed to that Division on the ground that his retention in a particular Department was necessary.

. . . .

45. An established Civil Servant of a rank below the Second Division may be appointed to that Division on the ground of special merit with a certificate from the Commissioners under Clause 7 of this Order. But such certificate shall only be granted exceptionally after not less than six years' established service (towards which not less than one year's and not more than two years' approved service as Registered Boy Clerk may be allowed to reckon), upon a recommendation from the Head of the Department and with the approval of the Treasury. Whenever such an appointment is made, the Treasury may allow the person appointed to enter the scale of the Division at such salary as

they shall think fit, not being higher than that which he was receiving at the date of his said appointment; and he shall be entitled to the same amount of annual holiday as if his previous established service had been in the Second Division.

. . . .

Statutory Rules and Orders, 1920, No. 1976

CIVIL SERVICE

Order in Council providing as to the qualifications of persons proposed to be appointed to H.M.'s Civil Establishments, and regulating the conduct of the said Establishments and the conditions of Service therein.

At the Court at Buckingham Palace, the 22nd day of July, 1920.

Present,

The King's Most Excellent Majesty in Council.

Whereas by Order in Council dated the 10th January, 1910, (hereinafter referred to as "the Consolidated Order"), and other Orders in Council dated respectively the 22nd March, 1918, the 23d October, 1918, the 18th December, 1918, the 15th April, 1919, the 18th August, 1919, the 9th December, 1919, and the 11th March, 1920, provision was made for testing the qualifications of persons proposed to be appointed, whether permanently or temporarily, to situations or employment in His Majesty's Civil Establishments, and for regulating the conduct of the said Establishments and the conditions of service therein:

And whereas by Order in Council dated the 5th February, 1918, certain persons were appointed to be His Majesty's Commissioners for testing, in accordance with the Consolidated Order or such further Order as His Majesty might issue in that behalf, the qualifications of persons proposed to be appointed as aforesaid, and for certain other purposes:

And whereas it is expedient to make further provision in relation to the matters aforesaid:

Now, therefore, His Majesty is pleased, by and with the advice of his Privy Council, to order, and it is hereby ordered, as follows:

1. (1) The persons appointed to be His Majesty's Commissioners as aforesaid by the said Order of the 5th February, 1918, or such other persons as His Majesty in Council may from time to time approve, shall be His Majesty's Civil Service Commissioners (hereinafter called "the Commissioners") for certifying the qualifications of the persons proposed to be appointed to any situation or employment in His Majesty's Civil Establishments.

(2) The Commissioners shall hold office during His Majesty's pleasure, and shall have power, subject to the approval of the Treasury, to employ from time to time such assistants as they may require for the discharge of the duties assigned to them.

2. The qualifications of all persons proposed to be appointed, whether permanently or temporarily, to any situation or employment in any of His Majesty's Civil Establishments shall, before they are appointed, be approved

by the Commissioners, and no person shall be so appointed until a certificate of his qualification has been issued by the Commissioners:

Provided that—

a) the provisions of this Article shall not apply to any of the situations enumerated in the Schedule to this Order; and

b) it shall not be necessary for any person who, at the date on which this Order comes into operation, holds a certificate of qualification from the Commissioners to obtain a new certificate of qualification on being appointed either by transfer or promotion to a situation which, in the opinion of the Commissioners, is similar to the situation in respect of which he already holds a certificate or may properly be filled in customary course of promotion from the class or grade of situation in respect of which the existing certificate was issued.

3. On the application of the Head of any Government Department the Commissioners may by order, made with the approval of the Treasury, from time to time add any situation to the Schedule to this Order or withdraw any situation therefrom.

4. The Commissioners may, subject to the approval of the Treasury, make regulations prescribing the manner in which persons are to be admitted to His Majesty's Civil Establishments or to any situation or class of situations therein, and the conditions on which the Commissioners may issue certificates of qualification for the purposes of this Order.

5. The Commissioners shall publish in the *London Gazette* notice of all appointments and promotions with respect to which certificates of qualifications are issued by them.

6. The Treasury may make regulations for controlling the conduct of His Majesty's Civil Establishments, and providing for the classification, remuneration, and other conditions of service of all persons employed therein, whether permanently or temporarily.

7. All orders and regulations made under this Order, whether by the Commissioners or the Treasury, shall be published in the *London Gazette.*

8. Articles 2 and 10 of the Consolidated Order shall be repealed as from the date on which this Order comes into operation, and the other provisions of the said recited Orders shall, so far as those Orders are in force on that date, be repealed as from the date on which regulations are made under this Order repealing or re-enacting, with or without modifications, those provisions:

Provided that—

a) the repeal aforesaid shall not affect the validity of anything done under or by virtue of the said Orders; and

b) nothing in this Order shall affect any right, privilege, or exemption enjoyed by any person in His Majesty's Civil Establishments under or by virtue of the provisions of the said Orders, so far as those orders are in force at the date on which this Order comes into operation.

Almeric FitzRoy

General Regulations Respecting Appointment to His Majesty's Civil Establishments Under the Order in Council of 22nd July, 1920

N.B.—These Regulations are liable to alteration at any time.

Whereas by Order in Council (hereinafter referred to as a "Principal Order") dated 22nd July, 1920, it is provided that (subject to the exception therein mentioned) the qualifications of all persons proposed to be appointed whether permanently or temporarily to any situation or employment in any of His Majesty's Civil Establishments, shall before they are appointed be approved by the Civil Service Commissioners, and no person shall be so appointed until a certificate of his qualification has been issued by the Commissioners;

And whereas it is provided by Clause 4 of the Principal Order that the Commissioners may, subject to the approval of the Treasury, make regulations prescribing the manner in which persons are to be admitted to His Majesty's Civil Establishments or to any situation or class of situations therein, and the conditions on which the Commissioners may issue certificates of qualification for the purposes of the Principal Order;

And whereas it is provided by Clause 8 of the Principal Order that Articles 2 and 10 of the Consolidated Order in Council dated 10th January, 1910, shall be repealed as from the date on which the Principal Order came into operation, and that the other provisions of the Orders recited in the Principal Order should be repealed as from the date on which regulations are made under the Principal Order repealing or re-enacting with or without modifications those provisions;

Now, therefore, the Civil Service Commissioners with the approval of the Treasury make the following regulations.

These regulations prescribe the conditions on which the Commissioners may issue certificates of qualification for admission to any situation or employment in His Majesty's Civil Establishments. These regulations are General Regulations applicable to both sexes and all situations. Words importing the masculine gender or the male sex in these Regulations denote either sex unless specific exception be made in the context.

AGE

1. Every candidate shall satisfy the Commissioners that he is within the limits of age (if any) already prescribed or hereafter in due form prescribed for the situation or employment to which he desires to be admitted. From the actual age of the candidate such deduction shall be made on account of military service, civil service, or otherwise, as is laid down in regulations for the situation or class or group of situations to which he desires to be admitted.

2. If no limit of age is prescribed by Regulations for the situation or class or group of situations concerned, the candidate shall satisfy the Commissioners that his age is suitable to the duties of the post which he seeks; but no person not already holding an established post shall be appointed to an established situation at an age exceeding 50 without the consent of the Treasury.

3. On the application of the Head of a Department and with the approval of the Treasury, the Commissioners may, if they are satisfied that there is due and sufficient cause, extend the upper prescribed limit of age for any candidate, except in an open competition.

HEALTH

4. Subject to the provisos appended to this clause every candidate shall satisfy the Commissioners that he is free from any physical defect or disease that would be likely to interfere with the proper discharge of his duties.

Provided that where an officer holding a pensionable situation in any of His Majesty's Civil Establishments is nominated by the Head of a Department for the issue of a certificate of qualification in respect of his promotion in the same Department, or of his transfer to another Department, the Commissioners may, at their discretion, if they see fit, grant their certificate of qualification on being satisfied that he is fully qualified in respect of age, character, knowledge and ability, without requiring evidence as to freedom from physical defect or disease, provided they are satisfied that the situation to which he is promoted or transferred does not require a higher degree of physical capacity than the situation which he already holds.

Provided also that in the case of persons whose health has been impaired by reason of service in His Majesty's Forces during the Great War, the Commissioners may on the conditions and in the manner prescribed by the Order in Council of 22nd March, 1918, issue modified (War) Certificates and special Recommendations which shall have effect as laid down in the Order and as if that Order had been part of the Regulations now made under the Order of 22nd July, 1920.

CHARACTER

5. Every candidate shall satisfy the Commissioners that his character is such as to qualify him for the situation or employment which he seeks.

KNOWLEDGE AND ABILITY

6. Every candidate shall satisfy the Commissioners that he is qualified in respect of knowledge and ability to discharge the duties of the situation which he seeks.

7. The tests shall be such as are prescribed by the regulations (if any) for the situation or group of situations to which the candidate desires to be admitted.

The normal method of entry will be by means of competitive examinations, according to regulations framed or to be from time to time framed by the Civil

Service Commissioners, and approved by the Treasury, open to all persons of the requisite age, health, character, and other qualifications prescribed in the said regulations who may be desirous of attending the same upon application made at the time and in the manner prescribed and subject to the payment of the fees from time to time prescribed. Such examinations shall be held at such periods, and for such situations or groups of situations, as the Commissioners with the approval of the Treasury, shall from time to time determine.

8. Where in exceptional cases no regulations have been made prescribing tests for the situation in question, the candidate shall satisfy the Commissioners in such manner as (having regard to the nature of the duties to be performed) they in their discretion may require of his fitness in respect of knowledge and ability for the duties of the post that he is seeking.

9. Where tests are prescribed for any situation, the regulations will lay down whether they shall be qualifying tests of candidates nominated by the Head of a Department, or competitive tests, and if competitive whether among candidates nominated by the Head of a Department or open to all persons who satisfy the conditions prescribed, and whether by examination or by examination and interview or by interview or otherwise.

10. The Commissioners may, if they think fit, dispense wholly or partly with any examination, competitive or qualifying, prescribed for any situation or groups of situations if one or other of the following conditions be fulfilled:—

a) That the Head of the Department and the Treasury consider after inquiry in the Civil Service that for a particular situation qualifications wholly or in part professional, or otherwise peculiar and not ordinarily to be acquired in the Civil Service, are required. The relevant particulars of every such case shall be published in the *London Gazette* and included in the Annual Report of the Civil Service Commissioners.

b) That the candidate or group of candidates concerned having been employed in a quasi-permanent capacity on work which has proved to be of a permanent character, and having given throughout a sufficient period of trial proof of fitness to perform the duties required, are put forward with the approval of the Treasury by the Head of the Department for establishment.

c) That it has been proved to the satisfaction of the Treasury and the Commissioners that the transfer or promotion of an established Civil Servant from one post to another not in customary course of promotion is desirable in the interests of the public service.

In every case falling within any of the classes (*a*), (*b*), (*c*), the Commissioners shall require such evidence as they think desirable to satisfy them of the fitness of the candidate in respect of knowledge and ability.

d) That the Head of the Department has satisfied the Treasury and the Civil Service Commissioners that the admission of a particular candidate to a specified situation is for special and exceptional reasons justified by the needs of the public service and the proved merit of the individual. The relevant particulars of every such case shall be published in the *London Gazette* and included in the Annual Report of the Civil Service Commissioners.

REINSTATEMENT AND REDUCTION

11. In any case in which the Head of a Department with the approval of the Treasury nominates a candidate for reinstatement in the Civil Service or for appointment to a situation inferior to that which he already holds the Commissioners may dispense with any further test of knowledge and ability.

NATIONALITY

12. Every candidate shall satisfy the Commissioners that he or she is a natural-born British subject and the son or daughter of a father also a natural-born British subject. Provided that exception may be made—

a) In the case of candidates who are serving in a civil situation to which they were admitted with the certificate of the Civil Service Commissioners.

b) In the case of persons who, being British subjects, and having served in His Majesty's Armed Forces in the Great War between 4th August, 1914, and 11th November, 1918, are serving and have served for not less than six months in unestablished uncertificated employment which in normal course, by departmental custom or by the grant of establishment to an unestablished class, confers a claim to nomination singly or by limited competition for established and certificated appointment and are nominated for that established and certificated appointment.

c) In the case of persons serving in unestablished uncertificated employment which in normal course, by departmental custom or by the grant of establishment to an unestablished class, confers a claim to nomination singly or by limited competition for established and certificated appointment, who are nominated for that established and certificated appointment, and who satisfy the rule in respect of nationality for established appointment which was in force when their unestablished service began, and

d) In the case of natural-born British subjects who served in His Majesty's Armed Forces in the Great War between 4th August, 1914, and 11th November, 1918.

A candidate will not be eligible for assignment or appointment to the Foreign Office or services under the control of the Secretary of State for Foreign Affairs unless he is a natural-born British subject and born within the United Kingdom or in one of the self-governing Dominions of parents also born within those Territories, except when the circumstances are such as to justify a departure from the general rule in which case provided the candidate satisfies the conditions prescribed by the preceding paragraphs of this regulation he may be admitted to appointment or competition by special permission of the Secretary of State for Foreign Affairs.

FEES

13. Candidates shall pay fees in such manner at such times and in such amounts as the Commissioners with the approval of the Treasury have prescribed or shall from time to time prescribe in regulations or other notice published in the *London Gazette.*

The Commissioners may, with the like approval, exempt from the payment of fees such classes of persons as they may think fit to exempt. Every such exemption shall be published in the *London Gazette.*

The Commissioners, with the like approval, may, by notice in the *London Gazette,* cancel any preceding notice therein, or any part thereof, and may, by such or by any further notice, vary the amount of the fees to be paid by persons attending examinations held by them, or the manner, or the time, of paying such fees, or the classes of persons required to pay them, or exempted from paying them.

REPEAL

14. Articles 3, 4, 5, 7, 9, and 11 of the Consolidated Order in Council of the 10th January, 1910, and the associated orders in Council of the 22nd March, 1918, 23rd October, 1918, 18th December, 1918, and 9th December, 1919, are hereby repealed.

Provided that all Regulations and rules for the admission of candidates to situations in the Civil Service made by the Commissioners under the Order in Council of 10th January, 1910, or under other Orders and still in force are hereby confirmed and shall remain in force until fresh or amended regulations or rules are made by the Commissioners under the Orders in Council of 22nd July, 1920, or one of them.

NOTE AS TO PROCEDURE FOR SETTLING REGULATIONS FOR PARTICULAR SITUATIONS, CLASSES OF SITUATIONS, OR GROUPS OF SITUATIONS

Subject in both cases to the provisos in Clause 2 of the Principal Order above mentioned.

a) Regulations as to conditions of entry into any situation, class of situations, or group of situations, peculiar to one Department, will be agreed between the Head of the Department and the Civil Service Commissioners and submitted to the Treasury for their approval.

b) Regulations as to conditions of entry to any class of situations or group of situations common to two or more Departments will be framed by the Civil Service Commissioners and submitted to the Treasury for their approval.

Civil Service Commission
6th April, 1923

DOCUMENT NO. 3

CONSTITUTION OF THE NATIONAL WHITLEY COUNCIL FOR THE ADMINISTRATIVE AND LEGAL DEPARTMENTS

Perhaps the most significant change in the British civil service in the present generation is the establishment of the Whitley Councils. These bodies are representative in equal numbers of the official and staff sides and have proved a valuable agency for presenting the views and criticisms of the staff, for conciliation, and for the adjustment of many points of difference.

The Whitley Council plan was first presented to alleviate the conflict of labor and capital in industry. The relevant documents for the industrial councils may be found in the Parliamentary Papers, Cd. 8606 (1917), Cd. 9001, 9002, 9085, 9099, 9153 (1918). The view rapidly gained ground that such councils would be effective in the civil service, and preliminary steps were taken in March, 1919, by an interdepartmental committee (the Heath Committee) to draft a scheme for the application of the Whitley system to the administrative departments of the civil service. This report (Cmd. 9, 1919) was submitted to the civil servants, who suggested modifications. The amended constitution was proposed in May, 1919, and established in July without further alterations. The constitution is reprinted in this section.

Report of the National Provisional Joint Committee on the Application of the Whitley Report to the Administrative Departments of the Civil Service

1. On 8th April, 1919, a Conference was held at Caxton Hall, Westminster, to consider the Report dated 7th March, 1919, on the Application of the Whitley Report to the Administrative Departments of the Civil Service.

The Conference resolved:—

"That the portion of Section 45 of the above-named Report, setting up a National Joint Committee to consider a Whitley scheme for the clerical and administrative branches of the Civil Service, be accepted.

"That this Report (and any other Reports dealing with the matter) be remitted to it for information.

"That the Provisional National Joint Committee so set up report not later than the 31st May, 1919."

2. In pursuance of this resolution a Provisional National Joint Committee, consisting of 30 members (15 official representatives and 15 representatives of the Civil Service Associations), was finally constituted.

3. During the course of their enquiry the Committee have held ten Meetings, and now beg to submit the following Report:—

4. We have not found it necessary to take oral evidence, but have carefully examined the above-named Report of 7th March and all the draft Whitley Reports drawn up by the various Civil Service Associations which have been submitted to us by express invitation, as well as certain memoranda, etc., bearing upon the problems before us.

5. We have from the outset agreed that the main objects of establishing a system of Joint Whitley Bodies for the Administrative Departments are to secure a greater measure of cooperation between the State, in its capacity as employer, and the general body of Civil Servants in matters affecting the Civil Service, with a view to increased efficiency in the public service combined with the well-being of those employed; to provide machinery for dealing with grievances, and generally to bring together the experience and different points of view of representatives of the administrative, clerical, and manipulative Civil Service.

6. For the purposes of this Report we have assumed that the Civil Service Arbitration Board will continue in being.

7. We feel that, in the absence of experience of the working of any strictly comparable arrangements, any proposals and suggestions for applying the principles of the Whitley Report to the Administrative Departments of the Civil Service must necessarily be tentative and exploratory. Experience will no doubt show the lines on which the activities of the Joint Civil Service Bodies can best develop, and for this reason we feel it inadvisable to attempt to lay down hard and fast rules in advance or to enter into details further than the exigencies of the moment seem to require.

In these circumstances we suggest that if our recommendations are adopted it should be on the understanding that they are subject to such modifications as time and experience may show to be necessary or desirable. In the course of our enquiry we have had to deal with several highly contentious questions, but as a result of full discussion and the clearer appreciation which has resulted from the consideration of our different points of view, we have been able to arrive at the unanimous conclusions embodied in this report. This happy result augurs well for the future success of the Civil Service Joint Bodies, and our experience leads us to express the confident expectation that if the members of those bodies will apply themselves to the task before them with a resolute determination to overcome difficulties and will contribute their common knowledge and experience toward the solution of present and future problems, the main objects for which the Joint Bodies are to be established will be attained.

8. Our proposals are based on the establishment of Joint Bodies falling into the following categories:—

I. A National Council.
II. Departmental Councils.
III. District and Office (or Works) Committees.

9. We proceed to set out the Constitution of the National Council followed by some notes explanatory of certain provisions in that constitution and then to indicate in broader outline our recommendations respecting the Departmental Councils and the District and Office (or Works) Committees.

10. We recommend the following constitution for the National Council:—

CONSTITUTION OF THE NATIONAL COUNCIL

MEMBERSHIP

11. The Council shall consist of 54 members (including four Secretaries) to be appointed as to one-half by the Government (the official side), and as to the other half by groups of Staff Associations (the staff side).

12. The Official Side.—The members of the official side of the Council shall be persons of standing (who may or may not be Civil Servants) and shall include at least one representative of the Treasury and one representative of the Ministry of Labor.

13. The Staff Side.—The staff side shall consist of persons of standing (who may or may not be Civil Servants) appointed by the Under-mentioned Groups of Staff Associations:

1) Post Office Associations.
2) Civil Service Federation.
3) Civil Service Alliance.
4) Society of Civil Servants and Association of First Division Civil Servants
5) Institution of Professional Civil Servants.
6) Temporary Staff Associations.

14. It shall be open to the authorities appointing the respective sides of the Council to vary their representatives.

15. The first Council shall be appointed to serve until the close of the Annual Meeting in 1921.

Casual vacancies shall be filled by the authority concerned, which shall appoint a member to serve for the remainder of the term for which the outgoing member was appointed.

OFFICERS

16. Chairman and Vice-Chairman.—The Chairman of the Council shall be a member of the official side; the Vice-Chairman shall be a member of the staff side of the Council.

17. Secretaries.—Each side of the Council shall appoint two of its members to act as Secretaries.

18. Quorum.—The quorum shall be 14 members on each side of the Council.

19. Meetings, etc.—The ordinary meetings of the Council shall be held as often as necessary and not less than once a quarter. The meeting in the month of October shall be the annual meeting. An agenda shall be circulated to all members not less than 14 days before the meetings of the Council. Business not on the agenda shall only be taken by permission of the Chairman and Vice-Chairman. A special meeting of the Council shall be called by the Chairman or Vice-Chairman as required. The business to be discussed at such meetings shall be limited to matters stated upon the notice summoning the meeting.

20. The Council shall draw up such standing orders and rules for the conduct of its business as it may deem necessary.

Objects and Functions

21. General Objects.—The objects of the National Council shall be to secure the greatest measure of cooperation between the State in its capacity as employer, and the general body of Civil Servants in matters affecting the Civil Service, with a view to increased efficiency in the public service combined with the well-being of those employed; to provide machinery for dealing with grievances, and generally to bring together the experience and different points of view of representatives of the administrative, clerical and manipulative Civil Service.

FUNCTIONS

22. The scope of the National Council shall comprise all matters which affect the conditions of service of the staff.

23. The functions of the National Council shall include the following:—

i) Provision of the best means for utilising the ideas and experience of the staff.

ii) Means for securing to the staff a greater share in and responsibility for the determination and observance of the conditions under which their duties are carried out.

iii) Determination of the general principles governing conditions of service, e.g., recruitment, hours, promotion, discipline, tenure, remuneration and superannuation.

In the National Council the discussion of promotion shall be restricted to the general aspects of the matter and the principles upon which promotions in general should rest. In no circumstances shall individual cases be taken into consideration.

It shall be open to the National Council to discuss the general principles underlying disciplinary action, but there shall be no discussion of individual cases.

iv) The encouragement of the further education of Civil Servants and their training in higher administration and organization.

v) Improvement of office machinery and organization and the provision of opportunities for the full consideration of suggestions by the staff on this subject.

vi) Proposed legislation so far as it has a bearing upon the position of Civil Servants in relation to their employment.

COMMITTEES

24. The National Council may appoint Standing Committees, Special Committees, and Grade Committees and may delegate special powers to any Committee so appointed.

The members of the Standing Committee shall be members of the Council. The Council may appoint on Special Committees such persons not necessarily being members of the Council as may serve the special purposes of the Council. Grade Committees shall consist of representatives of the grade concerned and official representatives, such persons not necessarily being members of the Council.

Remuneration of Certain Classes

25. The National Council shall be the only Joint Body to determine questions of remuneration affecting a class employed in two or more Departments. Such questions affecting Treasury Classes shall be referred by the Council to Grade Committees of that Council. In the case of other classes the National Council shall determine whether reference should be to Grade Committees of the National Council or to a joint meeting of the Departmental Councils concerned.

DECISIONS

26. The decisions of the Council shall be arrived at by agreement between the two sides, shall be signed by the Chairman and Vice-Chairman, shall be reported to the Cabinet, and thereupon shall become operative.

PUBLICATION OF PROCEEDINGS OF NATIONAL COUNCIL

27. Only statements issued under the authority of the Council shall be published, and such statements shall be as full and informative as possible.

MINUTES

28. The Council shall keep Minutes of its proceedings.

FINANCE

29. Each side of the Council shall be responsible for its own expenses; the common expenses shall be defrayed in equal proportions by the Government and the Staff Associations.

AMENDMENT OF THE CONSTITUTION

30. The Constitution of the Council may only be amended at an Annual Meeting. Notice of amendment of the Constitution must be given and circulated to the members of the Council at least one month before the meeting.

NOTES ON THE ABOVE CONSTITUTION

31. The National Council for the Administrative Departments should cover all Civil Servants not covered by the Joint Bodies for the Government Industrial Establishments. It will no doubt be necessary for certain grades to elect whether they will come within one or other of the two systems. It is indeed possible that in certain cases a grade may be under one system for certain purposes and under the other system for other purposes.

32. There may be problems of common interest to the Civil Servants covered by the Joint Bodies for the Administrative Departments and the Civil Servants covered by the Joint Bodies for the Industrial Establishments. Experience will indicate the best kind of machinery for the consideration of such problems, and the National Council will, we anticipate, keep in touch with the Joint Bodies for the Industrial Establishments when questions of this kind arise.

33. Membership.—We recommend that in the first instance there should be equality of numbers on the two sides of the National Council. After the fullest consideration we think that an aggregate initial membership of 54 will provide a body, the staff side of which should be representative of the Civil Service as a whole. While we have refrained from making any definite recommendations as to the direct representation of women by women on the National Council, women will be eligible for appointment to the official side of the Council, and it is understood that certain groups of Associations will include women among their members on the Council.

34. Separate Bodies need not be set up to deal with questions of Remuneration.—We are of opinion that the conditions in the Administrative Departments do not call for the establishment of separate Joint Bodies (analogous to the Trade Joint Councils in the Scheme for the Governmental Industrial Establishments) whose special function would be the consideration of wages questions. It will be observed that under the Constitution questions of remuneration affecting a class employed in two or more departments will normally be dealt with by Grade Committees of the National Council. We contemplate that as a rule the National Council will give formal approval to the findings of these Grade Committees.

35. Agreement (Procedure).—It will be observed that the Constitution provides that the decisions of the National Council shall be arrived at by agreement between the two sides representing respectively the Government and Civil Servants, shall be signed by the Chairman and the Vice-Chairman,

shall be reported to the Cabinet and shall thereupon become operative. It will be the duty of the Chairman to see that the decisions reach the proper executive authority without delay.

36. Disagreement.—We have carefully considered the position which may arise should the two sides of the Council fail to agree. If the question at issue is one of remuneration and so within the terms of reference of the Civil Service Arbitration Board, it will be remitted to that Board for adjudication. It has been suggested that fixed machinery should be created to deal with other questions on which agreement has not been arrived at and which are outside the Board's terms of reference. We feel, however, that it is undesirable to suggest any fixed machinery for the solution of differences as its existence would necessarily impair the influence and authority of the National Council. Moreover, these questions will vary considerably in their nature and importance, and will in our judgment call for varying treatment. A way out of a deadlock may in some cases be found by informal consultation between the Chairman and the Vice-Chairman, in others by referring the matter to an informal Committee, consisting of the Chairman and the Vice-Chairman and the four Secretaries. In other cases some other solution may be feasible. In view of these considerations we have not thought it necessary or desirable to make specific provision in the constitution of the National Council for cases of disagreement, and we are satisfied that the best course will be to leave such cases to be dealt with individually as and when they arise, and not to attempt to lay down in advance any hard and fast rules.

37. The National Council will not act as a Court of Appeal from a Departmental Council, but it will be open to a Departmental Council to ask the National Council for advice in cases of difficulty.

38. Special Leave.—We recommend that Civil Servants who are members of the staff side of the National Council should be given special leave with pay when attending meetings of that Council, and that the cost of their substitutes should be borne out of public funds.

39. We have received representations from various Irish Civil Service Associations on the subject of the establishment of a separate National Council for Ireland. After full consideration we have come to the conclusion that it is not competent for us, under our terms of reference, to make any definite recommendations on the subject, and we accordingly limit ourselves to expressing the opinion that questions exclusively affecting the conditions of service of Irish Civil Servants must be dealt with by Joint Bodies on which Irish Civil Servants have full and direct representation, and to pointing out that our recommendations respecting Special Committees of the National Council provide machinery for giving effect to this suggestion.

40. We have not thought it our duty to make any recommendation as to the allocation of seats to the specific groups on the staff side, but we are informed that the allocation will be as follows:

Post Office Association	10
Civil Service Alliance	6
Civil Service Federation	5
Society of Civil Servants and Association of First Division Civil Servants	2
Institution of Professional Civil Servants	2
Temporary Staff Associations	2

DEPARTMENTAL COUNCILS

41. We think that it is neither possible nor desirable to prescribe in detail a form of constitution for the individual Administrative Departments which differ from one another in size, in organization, and in the nature of the duties they exist to perform. We confine ourselves to indicating in broad outline the principles on which the Constitutions of the Departmental Joint Bodies should, in our judgment, be framed, leaving each Department free to work out for itself the particular constitution best suited to its own peculiar conditions and requirements.

42. As a general rule there should be one Departmental Council set up in each Department. In Departments which are large, or which contain interests of a varied or possibly diverse character, more than one Departmental Council may be necessary; some Departments on the other hand are so small that they may not need all the machinery of Councils.

43. A joint meeting of official representatives and representatives of the Staff Associations having members employed in the Department should be called in each Department to decide the number and character of the Joint Bodies to be set up in the Department and to settle their written constitutions. These should then be submitted to the National Council for approval: at the same time it is our opinion that the National Council should not scrutinize the individual constitutions beyond the point necessary to secure that they are in harmony with Whitley principles, and are, as far as may be, on uniform lines. We think it advisable that substantial amendments of the constitutions should be dealt with on the same lines.

44. Numbers.—It is important that the size of the Departmental Councils should be kept as small as is consistent with efficiency and with the preservation of their representative character. The number of members on each side should be settled by each Department and need not be equal or constant. It should be open to each side to vary their representatives.

45. Treasury Representation.—The constitution of a Departmental Council should provide for the addition to the official side of the Council, on the invitation of the Chairman, of a representative appointed by the Treasury as occasion may require. Treasury representation on Joint Bodies other than the National and Departmental Councils is not contemplated.

46. Chairman and Vice-Chairman.—The Chairman at every meeting of the Departmental Council should be a member of the official side of the Council. The Vice-Chairman should be a member of the staff side of the Council.

47. Representation.—The official side of a Departmental Council should be appointed by the Minister or the permanent Head of the Department. Members of the staff side should be elected by the Associations or groups of Associations having members employed in the particular Department.

Where an Association has members outside as well as inside a Department, the electorate for that Department should be the members of the Association in the Department and if necessary, special machinery should be set up by the Association to ensure the carrying into effect of this arrangement. It will be open to the electorate so constituted to choose as their representative any member or official of the Association who is employed in the Civil Service or, if not a person so employed, is a full time officer of the Association. The election should in all cases be under the authority of the Association concerned. Although certain questions relating to classes employed in two or more Departments will be dealt with by special Grade Committees of the National Council, this fact should not preclude members in those classes from being elected to serve on the Departmental Councils.

48. Functions.—The objects and functions of Departmental Councils will be those indicated for the National Council (paras. 21, 22, 23), so far as they have a special application to the particular Department, subject to the conditions that the determination of general questions is reserved for the National Council, and that questions common to two or more Departments, not being general questions, should be reported to the National Council, which may request the Departmental Councils concerned to meet and endeavour to agree on the subject under discussion. If desired by the Departmental Councils, the National Council may appoint a Chairman for such meetings.

49. Committees.—A Departmental Council may appoint Standing Committees, Special Committees, and Grade Committees and may delegate special powers to any committee so appointed.

The members of the Standing Committees shall be members of the Council. The Council may appoint on Special Committees such persons not necessarily being members of the Council as may serve the special purposes of the Council. Grade Committees shall consist of representatives of the grade concerned and official representatives, such persons not necessarily being members of the Council.

50. Promotion.—It shall be within the competence of a Departmental Council to discuss any promotion in regard to which it is represented by the staff side that the principles of promotion accepted by or with the sanction of the National Council have been violated. To ensure satisfactory working of this arrangement steps will have to be taken to acquaint the staff with the nature of the accepted principles of promotion. It has been urged upon us that the wide and early publicity of all vacancies is desirable, but in our opinion this is a matter which will properly fall to be considered by each Departmental Council, and we consequently content ourselves with recording the suggestion.

51. Discipline.—It shall be within the competence of the Departmental Council to discuss any case in which disciplinary action has been taken if it is represented by the staff side that such a course is desirable.

52. Decisions.—The decisions of Departmental Councils shall be arrived at by agreement between the two sides, shall be signed by the Chairman and Vice-Chairman, shall be reported to the Head of the Department and shall be operative. Our recommendations (para. 36) respecting cases of disagreement on the National Council apply to cases in which Departmental Councils fail to reach agreement on questions which they are competent to decide.

53. Only statements issued under the authority of the Departmental Council should be published, and such statements should be as full and informative as possible.

54. Minutes.—The Departmental Council should keep Minutes of its proceedings.

55. Finance.—Each side of the Departmental Council shall be responsible for its own expenses; the common expenses shall be defrayed in equal proportions by the Government and the staff associations. We recommend that Civil Servants, who are members of the staff side of a Departmental Council, should be given special leave with pay when attending meetings of the Council, the Associations bearing the cost of substitution where incurred.

District and Office (or Works) Committees

56. The establishment and functions of such Joint Bodies, if not decided at the joint meetings called in pursuance of our recommendation in para. 43 above, will be a matter for the decision of the Departmental Council concerned when constituted.

Like the Departmental Councils, these Joint Bodies should discuss individual cases of promotion and discipline whether such cases fall within paras. 50 and 51 above or not.

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57. We desire to express our appreciation of the valuable services rendered by the Secretaries, Messrs. Chase, Howorth, Milne, and Wilson.

Signed on behalf of the
National Provisional Joint Committee

Malcolm G. Ramsay
Chairman
G. H. Stuart Bunning
Vice-Chairman

28th May, 1919

DOCUMENT NO. 4

REPORT OF THE JOINT COMMITTEE ON REORGANIZATION[1]

One of the first tasks to which the Whitley Council turned was the reorganization of the national service. The Royal Commission of 1912–14 had proposed a scheme of reorganization which the war postponed. As early as 1914 there was general agreement that the old classification had been outgrown, and war conditions had introduced great changes in the establishments of most departments.

The task was one of great difficulty and complexity. The objective was to secure reasonable uniformity in classification for similar types of work throughout the service, and thereby uniformity in pay and conditions of service; to reduce to a minimum the number of special departmental classes; to lay down rules for movement from one class to another; to coordinate entrance requirements to the various classes of employment with the educational system; and to indicate the scales of pay appropriate to each class.

The resulting report represented statesmanship of a high order. Agreement was reached between official and staff sides on a comprehensive scheme, the details of which were gradually introduced, not without friction, in the next two or three years. The scheme has now become the established organization for the general clerical service of Great Britain.

CIVIL SERVICE NATIONAL WHITLEY COUNCIL REORGANIZATION COMMITTEE

Report

I. INTRODUCTORY NOTE

1. At the Second Meeting of the National Council for the Administrative and Legal Departments of the Home Civil Service on 14th October, 1919, it was resolved:

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[1] i. e., reclassification in the American sense of the word.

"That a special committee be appointed to consider the scope of the duties at present allotted to the Clerical Classes in the Civil Service; to report on the organization most appropriate to secure the effective performance of these duties; and to make recommendations as to scales of salary and method of recruitment. That it be an instruction to this committee to present a report by 31st January next."

A joint Committee was thereupon appointed, composed of members, nominated by the Official and Staff Sides of the National Council, and the first meeting was held on 25th November, 1919.

2. The instruction given to the Committee to present a report by 31st January of this year has compelled them to concentrate their attention upon the broad structure of the clerical organization of the Civil Service, and to defer for the time being the consideration of other parts of the task set them.

II. GENERAL OBSERVATIONS

3. We are not the first, as we shall not be the last, group of persons appointed to review the organization of the Public Service. The Civil Service, like other great institutions, has its own historical background, and its structure reveals on analysis the handiwork of successive reformers. But there are certain considerations attaching to the present enquiry which merit attention.

4. To begin with, this is the first occasion on which a body composed entirely of present or past Civil Servants, possessing among them a wide and varied experience of the Public Service, have been given the opportunity of framing a scheme for its reconstruction.

5. In the second place, the five years of war have left their mark upon the Civil Service. The necessities of war called into being new and improvised Departments of State for the conduct of administrative operations on a scale altogether beyond parallel and touching almost every branch of the economic life of the nation. The result has been a quickening of the interest taken by Civil Servants in the organization of the Service, and a fuller realization of the need for overhauling its machinery.

6. Even before the war it had become recognized that with the increase of legislation the business of Government had developed enormously both in volume and complexity. This development has rather been accelerated than arrested by the war. As a consequence, it has become more than ever an imperative necessity so to reconstruct the Civil Service as to enable it to discharge, with increasing efficiency, its primary functions of advising and assisting Ministers of the Crown; of implementing the policy prescribed by Ministers and by Parliament; and of carrying on the day-to-day administration of the King's Government.

7. The third and perhaps the most important feature that distinguishes our enquiry from any that have gone before it, is its recognition of a new principle of cooperation in the Public Service. It is only six months since the first meeting was held of the National Council which embodied the application of the

Whitley method to the Administrative and Legal Departments of the Civil Service. That a group of persons drawn from every part of a graded Service of the Crown should be able to present an agreed report upon the form and shape their Service should take is a notable and hopeful achievement.

III. THE RECRUITMENT AND STATUS OF WOMEN IN THE CIVIL SERVICE

8. In considering the question of the employment of women in the Civil Service, it must be noted that Parliament has laid down the principle that a person shall not be disqualified on grounds of sex from the exercise of any public function. We appreciate that it is not possible at this stage to attempt a final solution of the novel and complex problems involved in the employment of women, side by side with men, throughout the several classes of a graded service of the Crown. We are by common consent breaking new ground. But it has been our earnest endeavour, while realising that we are working in a field of strictly limited experience, to ensure that the opportunities afforded to women of proving their fitness to discharge the higher administrative duties of the Civil Service shall be full and liberal.

9. In the application of this principle we were met at the outset with the claim, which has the support of a number of members of the Committee, that in recruitment, status, pay and general conditions of service, there should be no differentiation between the sexes. In the direction of meeting this claim, we are agreed that within the parallel classes of the Civil Service women should be given a status and authority identical with that accorded to men. Further, whilst we propose that during the experimental period there should be separate Establishment Lists for men and for women within each class of the Civil Service, and that promotion for men and for women should proceed separately as vacancies occur in the higher establishment reserved for either sex, we are of opinion that the principles of training and of promotion that we have recommended for men should be applied equally to the parallel women classes, and that it should be the duty of Departments, under the general guidance of the Establishments Department of the Treasury, to see to it that women are regarded as available for employment on the same work as men within the several classes, and that women are given the widest opportunities of proving their administrative capacity. Whether the interests of efficiency will best be served by segregation, or by the employment of women and men side by side, is a matter on which experience varies; and we suggest that the requirements of Departments in this respect might appropriately be discussed at the Departmental Councils. It may fairly be argued that, in order to obtain the full value of the experiment, every opportunity should be given for men and women to work side by side.

10. As regards pay, we are agreed that the minimum of the basic scale in each class should be the same for women as for men, and that the incremental rates should be identical up to a point.

11. We are agreed that, in the case of the Clerical Class, we are no longer

in the experimental sphere. Experience has established that women are fully capable of discharging the clerical work of the Civil Service; and we recommend that women should be recruited to the Clerical Class proposed by us by the method of open competition by written examination. The higher examination age limit required for girls (16½–17½) as compared with boys, together with the need for a separate seniority list, makes it necessary that young women who are candidates for entry to this class should be recruited by a separate examination, though the subject-matter of the examination should be of the same standard as that prescribed for male candidates.

12. With regard, however, to the recruitment of the Administrative and Executive Classes, hereafter proposed, the Official Side, while desiring to retain for men the method of open competition by written examination, advocates in the case of women, at the present stage, a system of selection by impartial and authoritative Boards. The Staff Side attaches great importance to the principle of recruitment by open, competitive, written examination, and is prepared to assent to selection by Boards only on the condition that the question of recruitment will be reviewed by the National Council within a period of five years.

IV. THE ADMINISTRATIVE AND CLERICAL BRANCHES OF THE CIVIL SERVICE

13. Our task has been to determine, in broad outline, from what sources, and by what method or methods, the administrative and clerical branches of the Civil Service should be recruited; in what manner persons recruited to these branches should be classified and graded; and at what rates of remuneration, and under what conditions of service, they should be employed.

14. The answer to all these questions lies in a well-ordered analysis of the different kinds of work that the Civil Service is called upon to do, and in a considered judgment, based on this analysis, of the qualifications needed for the discharge of each main class of duties. An effective division of labour is of the very essence of sound organization. Without a clear general idea of the work to be done, and of the different degrees of capacity and effort that the work demands, no effective solution can be found of the problems of recruitment, grading and remuneration.

15. We have not been able in the time at our disposal, nor, indeed, should we have deemed it necessary, to examine in detail for the purposes of our enquiry the work of each Department of the Public Service. In considering the questions comprised within our reference we have thought it right to rely on the common fund of knowledge that we have gained from our experience of Civil Service organization and of the requirements of public business.

16. The administrative and clerical work of the Civil Service may be said, broadly, to fall into two main categories. In one category may be placed all such work as either is of a simple mechanical kind or consists in the application of well-defined regulations, decisions and practice to particular cases; in the other category, the work which is concerned with the formation of policy, with

the revision of existing practice or current regulations and decisions, and with the organization and direction of the business of Government.

17. For work so different in kind it is clearly necessary to secure more than one type of agent. Qualifications adapted to the performance of the simplest kind of work would be unequal to the discharge of the highest kind of work; and it would be impossible to justify the employment on simple mechanical duties of persons capable of performing the highest duties. After the most careful consideration, we have agreed that, in order properly to provide for the work falling within these two main categories, it will be necessary to employ not less than four different classes, viz: (*a*) A Writing Assistant Class for simple mechanical work. (*b*) A Clerical Class for the better sort of work included in the first main category defined above. (*c*) An Executive Class and (*d*) an Administrative Class for the work included in the second main category defined above.

We proceed to make our recommendations as regards the organization of these classes, and the salaries appropriate to each, observing that we have not found it practicable within the scope of this Report to consider salary scales with maxima over 500 pounds per annum.

A. *The Writing Assistant Class*

18. Women Writing Assistants are already employed in the Post Office, in the Health Insurance Departments, in the Ministry of Labour (Kew Record Office), and in the Registrar General's Department on work preliminary to machine operations (punching, tabulating, etc.); on hand-copying and transcribing work (writing out acknowledgments, filling up forms, warrants and bills); on the addressing of letters; on the counting and routine examination of postal orders, insurance cards, etc.; on the casting and preparation of schedules and lists, and the writing-up of simple cards; and in custody of card indexes. We are agreed that women Writing Assistants should continue to be employed on duties so described in the Departments where it now exists, and that its employment should be extended to other Departments, such as the Ministry of Pensions, where there are large blocks of simple routine work of a similar character to be performed. Where there are no large blocks of this kind of work we expect that it will be possible to provide for such duties by giving them to members of the Clerical Class during the initial stages of their career; but if experience shows that this is not possible without retaining members of the Clerical Class on such work for an unduly long period, the employment of Writing Assistants for that work should be considered.

19. But we wish to make it clear that it is not our intention to treat the Writing Assistants as a class common to the whole Service; nor do we propose the immediate extension of the employment of Writing Assistants, except for large blocks of quasi-mechanical work which can be separated from clerical duties proper. Our anticipation is that the total number of Writing Assistants employed in the Service as a whole will not be more than one-fourth of the

total number of the staff employed in the Clerical Class hereafter proposed (i.e., one-fifth of the total number of the two classes combined) and we propose that if at any time a material increase in this proportion appears likely, the whole question of the employment of Writing Assistants should be reviewed as a matter of principle by the National Council.

20. We recommend that the Class of Writing Assistants (in so far as it is recruited from outside the Service) should be recruited by local competitive examinations of a simple character, with age limits of 16 to 17. The Class should not be recruited from all over the country, and the regulations should be so framed as to secure for this work the services of persons resident in the locality where they are to be employed. The Class should, as at present, be established.

21. The scale of salary of this class should start at 18*s*. a week, rising to 20*s*. a week at the age of 17, and 22*s*. at 18, and should proceed from that rate by annual increments of 2*s*. a week to a maximum of 36*s*. a week. The annual leave of the Class should be 18 working days (exclusive of the usual public holidays) during the first five years of service, and 21 days thereafter.

22. We recommend that there should be recognized machinery for the selection of Writing Assistants who show potential capacity for better work and for their promotion to the Clerical Class if, on trial, they are found suitable.

23. We are of opinion that the normal hours of attendance of Writing Assistants should be seven a day, but that a half-holiday should be granted each Saturday, except when the state of business renders this impracticable. For the luncheon interval three-quarters of an hour should normally suffice, but it should be within the discretion of Heads of Departments to allow up to an hour in special cases of difficulty. Payment for overtime should not be made except for attendance in excess of 42 hours in a week.

B. *The Clerical Class*

24. To this Class we would entrust all the simpler clerical duties in Public Departments, in so far as these are not assigned to Writing Assistants in accordance with the principles already stated, and in addition the following duties:

Dealing with particular cases in accordance with well-defined regulations, instructions or general practice; scrutinising, checking and cross-checking straightforward accounts, claims, returns, etc., under well-defined instructions;

Preparation of material for returns, accounts, and statistics in prescribed forms;

Simple drafting and precis work. Collection of material on which judgments can be formed;

Supervision of the work of Writing Assistants.

25. We recommend that direct recruitment to this class should be by open, competitive written examination, with age limits of 16 to 17 for boys and 16½ to 17½ for girls. The syllabus of examination should be framed with reference to the standard of development reached at the end of the intermediate stage of a secondary school course. Separate examinations should be held for boys and girls; but the standard of qualification should be the same for candidates of either sex. All entrants should be subjected to a strict probation extending over a period of one year; and failure to pass this probation should involve discharge.

26. We recommend for male members of this Class the following scales of salary: 60 pounds a year on entry, rising to 80 pounds a year at the age of 18; thence by annual increments of 5 pounds to 100 pounds a year (at the age of 22); and thence by annual increments of 10 pounds to 120 pounds (age 24), and by 15 to 150 pounds (age 26), and thence by 10 pounds a year to a maximum salary of 250 pounds a year (attainable at the age of 36).

27. For women the scale should be as follows: 60 pounds a year on entry, rising to 80 pounds a year at the age of 18, thence by annual increments of 5 pounds to 120 pounds a year (at the age of 26); and thence by annual increments of 7 pounds 10 shillings to a maximum salary of 180 pounds a year (attainable at the age of 34).

28. We suggest that there should be an efficiency bar in both scales, at 180 pounds a year and 135 pounds a year respectively, beyond which members of the Class should not be allowed to proceed without a special certificate of competency to discharge the highest duties of the Class.

29. We recognise that experienced members of this Class will be capable of being employed either as supervisors of sections of clerical class work or on higher individual work similar to that done by members of the junior grade of the Executive Class; and we therefore recommend the creation of a higher grade of the Clerical Class, with a scale of salary (inclusive of overtime) for men ranging from 300 pounds a year by annual increments of 15 pounds to a maximum of 400 pounds a year, and for women ranging from 230 pounds a year by annual increments of 10 pounds to a maximum of 300 pounds a year.

30. The annual leave of the Clerical Class should be 24 working days (exclusive of the usual public holidays) and on promotion to the Higher Grade the annual leave (exclusive of the usual public holidays) should be increased to 36 days.

31. We recommend that the normal hours of attendance of the Clerical Class should be seven a day, but that a half-holiday should be granted each Saturday except when the state of business renders this impracticable. For the luncheon interval, three-quarters of an hour should normally suffice, but it should be within the discretion of Heads of Departments to allow up to an hour in special cases of difficulty. Payment for overtime should not be made except for attendance in excess of 42 hours in any week.

C. *The Executive Class*

32. To this Class we would assign the higher work of Supply and Accounting Departments, and of other executive or specialized branches of the Civil Service. This work covers a wide field, and requires in different degrees qualities of judgment, initiative and resource. In the junior ranks it comprises the critical examination of particular cases of lesser importance not clearly within the scope of approved regulations or general decisions, initial investigations into matters of higher importance, and the immediate direction of small blocks of business. In its upper ranges it is concerned with matters of internal organization and control, with the settlement of broad questions arising out of business in hand or in contemplation, and with the responsible conduct of important operations.

33. We are of opinion that, in so far as it may be desirable to appoint men from outside the Service to the staffs of these Departments and branches, recruitment should be by open, competitive, written examination between the ages of 18 and 19. The syllabus of examination should be framed with reference to the standard of development reached at the end of a secondary school course. As stated in Part III of our Report, we have not been able to recommend the immediate extension of this mode of recruitment to women, and have agreed that women candidates for the staffs of these Departments and branches should, during the period of experiment, be recruited by means of authoritative and impartial selection boards, between the ages of 18 and 25.

34. Entrants of both sexes so recruited should be regarded as members of a Training Grade, and during the term of their employment in this grade they should be given the widest possible training in all branches of the work of the Department or branch to which they are assigned.

35. Whilst we consider it necessary that provision should be made for the recruitment of these Departments and branches of persons from outside the Service, we contemplate that a considerable proportion of Executive Class posts will be filled by promotion from the Clerical Class. Undoubtedly, many members of this Class will be found to possess qualifications for higher than clerical work. We recommend accordingly that the Training Grade should be open to men and women selected from the Clerical Class in the early stages of their career on account of proved ability and potential capacity for the discharge in due course of higher work. A Selection Board should be established in each Government Office to investigate and decide on the qualifications of members of the Clerical Class recommended by the heads of their respective branches as having the necessary qualifications for admission to the Grade; and a central pooling arrangement should be provided to meet the case of those members of the Clerical Class who, though fit for admission to the Grade, have no opening within their own office.

36. We do not contemplate that all offices will contain members of both the Clerical and the Executive Classes. In Departments where the Executive

Class is not employed, there should be posts corresponding in grading and pay to those of the Higher Grade of the Executive Class, as defined in paragraph 40.

37. All members of the Training Grade, whether recruited from outside the Service or transferred from the Clerical Class, should be subjected to a strict probation, extending over a period of two years; and failure to pass this probation should involve the discharge of the directly recruited man or woman, and the reversion to the Clerical Class of the man or woman transferred therefrom.

38. Officers serving in the Training Grade should be placed on the following scales of salary (inclusive of overtime): For Men, 100 pounds a year, rising by annual increments of 10 pounds to 130 pounds a year, and proceeding thence by annual increments of 15 pounds to a maximum of 400 pounds a year; and for Women, 100 pounds a year, rising by annual increments of 10 pounds to a maximum of 300 pounds a year.

39. We fully realise that members of the Clerical Class who fail to qualify in the early stages of their career for admission to the Training Grade may develop later the special qualifications required for promotion to higher directing staff posts. We therefore recommend that members of the Training Grade should not be regarded as alone eligible for promotion to these higher posts, but that members of the Clerical Class (normally of the Higher Grade) who reveal the necessary qualifications should also be eligible on their merits for promotion to them; and any such officer who shows real promise of being fit for advancement to the higher posts referred to in paragraph 40 should be given, as far as possible, the same opportunities of training as are provided for members of the Training Grade.

40. We suggest, as appropriate to the duties of the grade to which men and women would normally receive their first promotion from the Training Grade, and from the Higher Grade of the Clerical Class, scales of salary (inclusive of overtime) of the following amounts: For men, a scale ranging from 400 pounds by annual increments of 15 pounds to a maximum of 500 pounds a year; and for women, a scale ranging from 300 pounds by annual increments of 15 pounds to a maximum of 400 pounds a year.

41. We are of opinion that for members of the Executive Class the annual leave (exclusive of the usual public holidays) should be 36 working days, and that this allowance should be increased to 48 days (exclusive of the usual public holidays) on promotion to the grade carrying a scale of 400 pounds to 500 pounds (men) and 300 pounds to 400 pounds (women), after 15 years' service in a grade eligible for 36 days.

42. We recommend that the normal hours of attendance of this Class should be seven a day, but that a half-holiday should be granted each Saturday except when the state of business renders this impracticable. For the luncheon interval three-quarters of an hour should normally suffice, but it should be within the discretion of Heads of Departments to allow up to an hour in special cases of difficulty.

D. *The Administrative Class*

43. The duties appropriate to this Class are those concerned with the formation of policy, with the co-ordination and improvement of Government machinery, and with the general administration and control of the Departments of the Public Service. For the effective performance of these duties, officers of the highest standard of qualification are needed; and we propose that such officers should be obtained partly by selection from inside the Service and partly by recruitment from outside the Service.

44. Experience has shown that the higher administrative work of the Public Service requires for its discharge a proportion of men recruited at the University leaving age; and we recommend, therefore, that provision should be made for the continuance of the present system by which men are selected for appointment to the Public Service by means of an open, competitive examination in the subjects embraced by the various honours courses of University institutions. The present age limits are 22 to 24. Some of us are of opinion that the lower age limit should be reduced to 21; but as the information before us is not sufficient to enable us to make a recommendation, we suggest that this point should be further explored. We are agreed that, during the period of experiment, this mode of recruitment should be limited to men, and that women directly recruited to the Administrative Class should be chosen between the ages of 22 and 30 by an authoritative and impartial Selection Board, with or without qualifying examination.

45. The special requirements of the administrative work constitute a clear justification for bringing into the Public Service persons possessing the high educational qualifications described above. We do not, however, contemplate that recruitment to the Administrative Class should be solely from outside the Service. On the contrary, our view is that the Class should be open to all men and women already employed in the Service who show early proof of real ability and promise of being able to discharge, in course of time, higher administrative functions. In order to meet such cases, we recommend that a Central Authority should be established to investigate and decide on the qualifications of candidates recommended by the Heads of their respective Departments, and that it should be an instruction to Heads of Departments to submit to this Authority from time to time the names of young men and women having, in their judgment, the necessary qualifications for admission to the Administrative Class.

46. Men and women so recruited should be regarded as a Cadet Corps from which selection should be made to higher administrative posts, and members of this Corps should be treated, so far as practicable, as a body available for service in any Department in which the Administrative Class is employed.

47. It is in our view important that the number of persons recruited to the Cadet Corps of the Administrative Class should be limited to the strict minimum required to provide adequately for the work of the higher administrative positions in the Public Service, and that the recruits so obtained should have

assigned to them the responsible duties for the performance of which they have been engaged as soon as they have passed through the necessary period of preliminary training.

48. We consider, therefore, that the ratio of the number of Cadets to that of the higher administrative posts should be so adjusted as to secure that in practice Cadets will be able to count upon promotion to substantive administrative rank as soon as they become fully qualified to discharge the duties and responsibilities attaching thereto. We believe that if Departments, in cooperation with the Treasury, carefully regulate their establishment at the outset and from time to time so as to conform to this conception of the junior grade as a training corps, they will be enabled to give effect to the anticipations expressed above.

49. All members of the Cadet Corps, whether recruited from outside the Service or transferred to it from inside the Service, should be subject to a strict probation of two years, and failure to pass this probation should involve the discharge of a directly recruited officer and the reversion of an officer transferred from another class.

50. For men cadets, we suggest a scale (inclusive of overtime) of 200 pounds by annual increments of 20 pounds to 240 pounds, and thence by annual increments of 25 pounds to a maximum of 500 pounds a year. Women cadets should be placed on a scale (inclusive of overtime) of 200 pounds a year, rising by annual increments of 20 pounds to a maximum of 400 pounds a year.

51. We are of opinion that well-qualified officers of other classes who have not been chosen for admission to the Cadet Corps in the early stages of their career should be eligible for employment on work of the same kind as is entrusted to officers in the course of their service in the Cadet Corps. These selected officers should, we consider, be placed on the following scales of salary (inclusive of overtime): Men, 400 pounds a year, rising by annual increments of 15 pounds to a maximum of 500 pounds a year. Women, 300 pounds a year, rising by annual increments of 15 pounds to a maximum of 400 pounds a year.

52. Men and women of other Classes (normally in the Grade referred to in paragraph 51) should be eligible on their merits for promotion to the higher grades of the Administrative Class, and if they show promise of becoming fit for such promotion in due course they should be given, as far as possible, the same opportunities for training as are provided for men and women belonging to the Cadet Corps.

53. We recommend that the scale of annual leave for the Administrative Class should be the same as is now authorized for the First Division, namely, 36 working days for the first ten years of service, and thereafter 48 days (exclusive, in both cases, of the usual public holidays).

54. We recommend that the normal hours of attendance of this Class should be seven a day, but that a half-holiday should be granted each Satur-

day, except when the state of business renders this impracticable. For the luncheon interval, three-quarters of an hour should normally suffice, but it should be within the discretion of Heads of Departments to allow up to an hour in special cases of difficulty.

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55. In concluding this section of our Report, we think it desirable to call special attention to certain cardinal elements in the revised scheme that we have devised for the recruitment and classification of the administrative and clerical branches of the Civil Service.

In the first place, we have found ourselves in entire agreement with the views expressed by the Royal Commission on the Civil Service regarding the evil effects of employing temporary clerical staff on permanent work. Our intention is that all the classes proposed by us should be employed on a permanent and pensionable footing.

Secondly, it will be observed that, in drawing up our scheme, we have been careful to propose age limits for recruitment, so as to correspond as closely as possible with the completion of well-defined stages in the educational system of the country.

Thirdly, we have endeavoured throughout our whole scheme to secure that as far as possible persons recruited to the Service at different ages and by different tests should be placed on an equality for the purpose of opportunity of promotion to higher posts. We feel strongly that artificial barriers to promotion, where now they exist, should be removed; and that material hindrances must not be allowed to block merit and ability.

V. TYPISTS AND SHORTHAND TYPISTS

56. We have thought it well to reserve to a separate section of our Report consideration of the conditions of employment of Typists and Shorthand Typists. The work of these two grades is intimately related to the work of the Clerical and Administrative Classes, but their functions are special and distinct and cannot be suitably combined with those of any clerical class.

57. Under present conditions the two grades of Typists and Shorthand Typists form a common class; the proportion of Shorthand Typists in any Department being restricted (save with special Treasury sanction) to one-half of the total staff. Typists pass into the Shorthand Typist Grade as vacancies occur and subject to a qualifying examination. The present scales (exclusive of war bonus) for London offices are as follows:

Typists........................	20*s.*	2*s.*	32*s.* a week
Shorthand Typists...............	26*s.*	2*s.*	42*s.* a week

Superintendents are paid at the rate of 50*s.* a week and Chief Superintendents on a scale of salary ranging from 135 pounds a year by annual increments of 5 pounds to 150 pounds a year. The rates for the superintending posts are intended to cover overtime up to four hours a week, but Superintendents and Chief Superintendents are eligible for overtime gratuities in respect of any extraordinary overtime that they may be obliged to work.

58. We propose that the two grades—Women Typists and Shorthand Typists—should in future form two separate classes, the numbers in each class being settled on the basis of the requirements of each Department. The Typists' Class should be recruited by means of open, competitive, written examination among candidates between the ages of 18 and 28. The educational test for admission to the Class might with advantage be made somewhat more severe.

59. We recommend that the Shorthand-Typist Class should normally be recruited by limited competitive examinations open to established Typists of not less than a year's service, the examination subjects including shorthand (the test to cover speed, accuracy, spelling and punctuation), precis and an essay. Promotion to the Shorthand-Typist grade should be open to qualified candidates in all Departments instead of being, as it is at present, restricted to Typists serving in Departments where vacancies exist. In the event of failure at any time to obtain a sufficient number of duly qualified candidates from the ranks of the established typist class, arrangements should be made for the entry, by competitive examination, of expert Shorthand typists from other sources.

60. We suggest that the scale for Typists should be 22*s.* from age 18 to 19; 26*s.* at 20; 28*s.* at 21 (or over, in the case of entrants over 21); and thence by increments of 2*s.* to 36*s.* a week.

For Shorthand Typists the scale should be 28*s.*, proceeding by annual increments of 2*s.* 6*d.* to 46*s.* a week, and Superintendents should be on a scale of 150 pounds by annual increments of 7 pounds 10*s.* to 180 pounds a year.

61. For Chief Superintendents there should be higher rates fixed according to the responsibilities of the post, which vary greatly with the Department.

Under present regulations, if two or more Superintendents are employed, one may be graded as a Chief Superintendent. We do not consider that a scale in excess of the improved scale here recommended for Superintendents is justified where the total typing staff does not exceed 25, but, subject to this observation, we think that the scale for Chief Superintendents should begin at not less than 200 pounds a year.

The salaries of Controllers should also be given special consideration.

62. The leave should be:

Typists.—18 days during the first five years, and 21 days thereafter.

Shorthand Typists.—21 days during the first five years, and 24 days thereafter.

Superintendents.—24 days.

Chief Superintendents and Controllers.—30 days.

63. We recommend that special machinery should be established for the promotion of members of the above Classes to the Clerical Class.

64. We are of opinion that the normal hours of attendance of the Typing

Class should be seven a day, but that a half-holiday should be granted each Saturday except when the state of business renders this impracticable. For the luncheon interval, three-quarters of an hour should normally suffice, but it should be within the discretion of Heads of Departments to allow up to an hour in special cases of difficulty. Payment for overtime to Typists and Shorthand Typists should not be made except for attendance in excess of 42 hours in any week. We do not suggest any change in the system of payment for overtime applicable in the case of Superintendents and Chief Superintendents.

. . . .

VII. CONCLUSION

77. Such, then, are the proposals that we commend to the attention of the National Council; but we desire, in conclusion, to emphasise the truth that forms are lifeless things without the spirit that animates them, and that no rules or regulations have any value apart from the broad and sympathetic treatment with which they should be handled and interpreted. Administration is at least as much a matter of heart as of brain. Throughout our deliberations we have striven to promote what we conceive to be the best interests equally of the State and of the Civil Service; we have endeavoured to remedy what has appeared to us to be defective, while, at the same time, not impairing what experience has shown to be good; and in all that we have proposed we have kept steadily in view the ideal of an efficient and contented Public Service.

78. We wish to express our warm appreciation of the manner in which our Secretaries, Mr. W. R. Fraser and Mr. David Milne, have discharged the heavy duties which have fallen upon them in connection with the preparation of this Report.

Malcolm G. Ramsay, *Chairman*
G. H. Stuart-Bunning, *Vice-Chairman*

17th February, 1920

DOCUMENT NO. 5

REPORT OF THE COST OF LIVING COMMITTEE

The enormous increase in the cost of living during and after the war raised very difficult problems for civil servants in all countries. Temporary expedients, resorted to in Great Britain as elsewhere, finally gave way to solutions more nearly based on principle.

Sporadic increases of salary during the war, coupled with increasing pressure from government employees, led in 1917 to the establishment of a board of conciliation and arbitration. This board, whose duties were confined to adjustments in the salary, hours, and conditions of work of civil servants and government employees, operated to give substantial increases in pay from its inception until the government decided in 1922 to abolish it.

In order to relieve the court to a certain degree, and in order to lay down a definite basis of salary adjustment, a new principle was introduced in 1919 by a report of a joint committee of the Whitley Council on the cost of living. This report recommended a bonus over and above base pay, rising and falling with changes in the cost of living. It was agreed that the cost of living should be represented by official figures published by the minister of labour. The index in March, 1919, stood at 130 per cent of the standard cost of living as of July, 1914. For every change of five points in the cost-of-living index, a corresponding change of one twenty-sixth was to be made in the bonus, the revisions taking place every six months after the first year.

This scheme was accepted by the government and remains an integral part of the method of fixing salaries today. A substitute for the conciliation board was found in 1925 in the industrial court (see Document Nos. 7, 8).

CIVIL SERVICE NATIONAL WHITLEY COUNCIL COST OF LIVING COMMITTEE

Report

I. INTRODUCTORY NOTE

1. At the second meeting of the National Council for the Administrative and Legal Departments of the Home Civil Service on 14th October 1919, it was resolved:

"That a Special Committee be appointed to consider the increase in the cost of living and its effect upon the salaries of Civil Servants, whether permanent or temporary, and to report to the Council."

A joint committee was thereupon appointed, composed of members nominated by the official and staff sides of the National Council.

II. GENERAL OBSERVATIONS

2. We have confined our enquiries to permanent Civil Servants who are now in receipt of bonus as conferred by Civil Service Arbitration Board award No. 101 and whose salaries (on a pre-war basis) do not exceed 500 £. per annum.

Our enquiries mainly centered on two broad issues: (*a*) The framing of a scheme, which would be appropriate and equitable in its general incidence. (*b*) The provision of machinery for adjustment of the scheme in accordance with future fluctuations in cost of living.

3. Before dealing with these points in detail, we think it right to set out the more important of the general considerations which have affected our decisions:

a) The question of an increase in the amount of War Bonus as conferred by Award No. 84 of the Civil Service Arbitration Board, was taken before that Board in October 1919, and they decided (in their Award No. 101) that—

- *i*) The percentage rates of bonus payable to persons of 16 years of age and upwards should be increased to 30 per cent. of their "ordinary remuneration."
- *ii*) The flat rates of bonus should continue unchanged.
- *iii*) The maximum total rate of bonus should be increased to 500£. a year for men and 300£. a year for women.

This award was applied to all permanent officers and employees of the Government to whom Award No. 84 had been applied. In making the Award, the Civil Service Arbitration Board took cognizance of the fact that the *Labour Gazette* for October showed an increase from 115 per cent. to 120 per cent. in the official figure of the cost of living, and that there had subsequently been a further advance in the price of certain staple goods.

Since this award was made the general situation has changed notably in two respects. In the first place the official cost of living (representing the average percentage increase, as compared with July, 1914, in the general level of retail prices including those of food, clothing, fuel and light, etc., as well as rent) has shown a continued upward tendency and was 125 at the beginning of November, December, and January, 130 at the beginning of February and March, and 132 at the beginning of April, whilst it was estimated (in the *Labour Gazette* for April) that the increases in flour and bread prices resulting from a reduction of the bread subsidy would, if the prices of other commodities remained unchanged, raise the cost of living figure to about 138.

In the second place the general wages situation in outside industries has been (and continues to be) subject to considerable changes.

b) We appreciate the necessity of giving due weight to the practice in outside employment, but we have found it impossible to deduce from outside practice any clear guiding principle.

As regards industrial staffs it was stated in the *Labour Gazette* (April, 1920) that "in some cases where the same flat rate advance has been applied to all adult workmen, the increase up to the end of February 1920 was equivalent to only about 100 per cent., or less in some cases, on the pre-war rate. On the other hand, in some other cases, particularly among the lower-paid grades in the same industries, the advances are equivalent to as much as 170 per cent. or 180 per cent. on the pre-war rates. While the information in the possession of the Ministry of Labour is not sufficiently complete to enable the average percentage increase for all industries and occupations to be calculated exactly, it is estimated, on the basis of the available data, that the average increase in weekly wages up to the end of February 1920 was about 120 to 130 per cent. on the pre-war rates." But this statement could only be regarded as a statement of general tendency. On the one hand, a clear distinction has not always been made, in outside industries, between increases of pay in respect of increased cost of living and increases based on other considerations; on the other hand, the statement quoted above clearly takes no account of changes, actual or prospective, since February 1920.

In the case of salaried classes the general tendency has been still more difficult to determine. The bonuses paid in different employments and even by different employers for the same class of work vary within very wide limits. Moreover, many Public Bodies have modelled the bonuses of their employees on the Civil Service bonus.

c) We note that the increases conferred by Award 101 represented percentage increases for adult men ranging from 140 per cent. on a pre-war wage of *22s.* a week to 42 per cent. on a pre-war salary of 500£. per annum.

d) We agree with the Civil Service Arbitration Board that "in determining the extent to which different classes of Civil Servants should be called upon to share in the national burden by foregoing full compensation for the decrease in the purchasing power of money, the extent to which they are already sharing in that burden by paying increased income tax is a relevant consideration."

e) We appreciate the fact that in the case of the lowest wages grades the pre-war margin of subsistence was so limited that the award to them of a percentage increase corresponding to the full percentage increase in the cost of living since 1914 is justified and is amply supported by outside practice.

III. BONUS SCHEME

4. After full consideration of all the factors set out in Section II., we recommend for adoption the following bonus based on a standard cost of living figure of 130, i.e., the figure shown in the *Labour Gazette* as the percentage increase at 1st February and 1st March 1920:

a) Where the ordinary rate of remuneration does not exceed 35*s*. a week (91£. 5*s*. per annum)—
    130 per cent. of ordinary remuneration.

b) Where the ordinary rate of remuneration exceeds 35*s*. a week (91£. 5*s*. per annum) but does not exceed 200£. per annum—
    130 per cent. on the first 35*s*. a week (91£. 5*s*. per annum);
    60 per cent. on such amount of ordinary remuneration as is in excess of 35*s*. a week (91£. 5*s*. per annum).

c) Where the ordinary rate of remuneration exceeds 200£. per annum—
    130 per cent. on the first 35*s*. a week (91£. 5*s*. per annum);
    60 per cent. on the next 108£. 15*s*. per annum;
    45 per cent. on such amount of ordinary remuneration as is in excess of 200£. per annum, up to 500£. per annum.

d) For the purposes of this scheme the expression "ordinary remuneration" shall be deemed to include remuneration by way of allowance, but to exclude overtime pay, war bonus and all other emoluments or their monetary equivalent. In the case of piece-workers their wages shall be based on the time rate for an ordinary working week and not on their piece-work earnings.

e) The bonus to be applied as from 1st March 1920, irrespective of age or sex, to all permanent full-time officers and employees of the Government whether established or unestablished, and part-time employees engaged on manual duties to whom the terms of Civil Service Arbitration Board Awards No. 84 and No. 101 have been applied. In the case of part-time employees engaged on manual duties the bonus to be calculated at such proportion of the bonus payable to full-time employees on similar work as their ordinary hours of work bear to such full-time employment.

f) The bonus to be subject to revision every four months during the first twelve months (i.e., on 1st July 1920, 1st November 1920, and 1st March 1921) and thereafter every six months.

g) For the purpose of these revisions the standard cost of living figure to be arrived at by taking the average of the official figures (as defined in paragraph 3 (*a*) above) for the preceding four months (or for the preceding six months in the case of revisions subsequent to that of March 1921), e.g., the revision on 1st July 1920, to be based on the average of the official cost of living figures at 1st March, 1st April, 1st May, and 1st June, respectively.

The bonus described in subsections (*a*) (*b*) and (*c*) to be increased or decreased by 1/26th (i.e. 5/130) for every 5 full points by which the average cost of living figure, so determined, rises above or falls below 130, variations of less than 5 full points in either direction being ignored.

h) In the case of persons retiring on or after the 1st March 1920, the pay and emoluments on which their pensions and/or gratuities would normally be granted shall be increased by 75 per cent. of the bonus current at the date of retirement except in cases falling within the scope of Section 12 of the Superannuation Act, 1834. In such cases the amount of bonus reckoning for pension, etc. shall be the average annual amount drawn in the three years preceding retirement or death, or three-quarters of the bonus actually drawn at retirement or death, whichever is less.

i) In the case of the lowest wages grades, for which Award No. 101 would be more favourable, persons in the Service on 1st March 1920 to have the option of continuing to be paid in accordance with Award No. 101 so long as the average cost of living figure is not less than 125, provided that any person who elects to take the new bonus whilst the average cost of living figure is still not less than 125, shall not be entitled to exercise a fresh option with the view of reverting to the former scheme.

j) The increases accruing from this scheme to count as heretofore for the purpose of calculating overtime pay. Persons whose overtime pay is calculated at a fixed rate or is subject to an over-riding maximum to receive a corresponding benefit by way of increase in the fixed rate or over-riding maximum, the amount of such increase to be determined by agreement.

IV. OTHER CLASSES

5. While we have confined ourselves in our actual recommendation to persons whose ordinary rate of remuneration does not exceed 500£. per annum, it has been conveyed to us that if the above scheme becomes operative it will in any event be applied so as to include officers on rates of salary up to 1,000£. per annum, and on scales of salary with maxima not exceeding that amount.

6. We contemplate that the case of classes to which Civil Service Arbitration Board Award No. 101 has been applied with modifications will be reviewed at an early date.

7. We reserve for further consideration the question of the effect of the increase in the cost of living upon the wages and salaries of officers and employees not covered by Civil Service Arbitration Board Awards Nos. 84 and 101.

8. In conclusion we desire to record our warm appreciation of the services of our Secretaries, Mr. G. G. Barnes and Mr. G. Chase, who have been of the greatest assistance to us in the course of our deliberations and in the preparation of our Report.

R. S. Meiklejohn,
Chairman

G. H. Stuart-Bunning,
Vice-Chairman

8th May 1920

DOCUMENT NO. 6

REPORT OF THE COMMITTEE ON PROMOTION

Among the subjects explored in the early days of the Whitley Council was the method of promotion. The essence of the report is found in Secs. 6 and 7 in which assent is given to "the principle that the responsibility of the Head of the Department must remain unimpaired," and to "the consideration ruling all promotions . . . . the advancement of the efficiency of the public service," which can only be secured by determining promotions on the ground of fitness.

The details of this report are full of interest. They illustrate a reasoned attempt to combine the advantages of assured employee influence with definite official responsibility for making promotions. The recommendations of the committee were adopted by the government and have been in force for a decade, with slight variations from department to department.

NATIONAL COUNCIL FOR THE ADMINISTRATIVE AND LEGAL DEPARTMENTS OF THE CIVIL SERVICE

Committee on Promotion: First Report

I. INTRODUCTORY

. . . .

II. GENERAL OBSERVATIONS

3. The determination of the general principles of promotion is a function of the National Whitley Council under the terms of the Report of the Provisional Joint Committee recommending the application of the Whitley system to the Civil Service. While such principles will be generally applicable, the methods by which effect is given to them will need adaptation in varying degrees to suit the circumstances of different Departments. At the same time we draw attention to the desirability of standardising those methods as far as possible.

4. The Royal Commission on the Civil Service in its Fourth Report (page 60) recommended that promotion to the higher grades of the Administrative Class should be determined by the selection of the most competent officers to whatever class or Department they may belong. We are in complete agreement with that recommendation and with the Reorganization Committee

in its desire, as expressed in paragraph 55 of its Interim Report, that the fullest opportunities should be afforded for promotion throughout the Civil Service, and our proposals have been drawn up in the light of these recommendations.

5. We have considered as falling within the scope of our reference, the principles and methods which should govern the filling of all posts in the Administrative and Legal Departments of the Civil Service to which it is practicable to advance Civil Servants. We recognise, however, that promotions of officers to controlling posts are subject to special considerations, and for this reason we anticipate that the procedure suggested by us will not apply to such promotions. In order to prevent varying interpretations of this limitation, we recommend that it should be uniformly interpreted as applying to posts with salaries rising above 900£. a year. It is recognised that different considerations may be involved in the filling of acting appointments, but the procedure recommended in this Report should be applied where suitable.

III. THE PRINCIPLES OF PROMOTION

6. During the course of our enquiry we have constantly kept in mind the principle that the responsibility of Head of the Department must remain unimpaired whatever machinery for promotion may be adopted within the Department. We consider, however, that the staff should be entitled to make representations on the subject of promotions in the manner subsequently indicated.

7. We are agreed that the consideration ruling all promotions should be the advancement of the efficiency of the public service, and that this can only be secured by determining promotions on the ground of fitness. The qualities which are normally factors in determining fitness are stated in the model form of Annual Report appearing in the Appendix. For different posts, however, the relative importance of qualities varies, and the fitness of an officer is indicated not by a mere enumeration of the qualities he has displayed in the past, but by the extent to which he possesses that combination of qualities which is requisite for the work to be performed in the immediate or more distant future. In promotions to posts in which the work is of a routine character seniority should be allowed more weight than in the case of promotions where greater responsibilities and initiative are involved.

8. We are of opinion that any attempt to secure promotion by the exercise of influence should result in disqualification.

IV. ANNUAL REPORTS

9. In order that the qualifications of officers who are considered for promotion may be more systematically recorded and readily available, and in order that such qualifications may be estimated in accordance with a common standard, we recommend the institution of a system of Annual Reports. We contemplate the application of this system to all officers within the range of

promotion whose salaries do not exceed 700£. a year, subject to the reservation that in the case of officers with salaries above 500£. a year it should be open to Departments to waive the use of such reports at their discretion, if circumstances render such a step desirable. This discretionary power, however, should not be exercised until an opportunity for consideration of the subject has been afforded to the Departmental Council.

10. We append a model form of Annual Report which we consider suitable for adoption in normal circumstances. This has been drawn up after consideration of the periodic report forms which are already in existence in several Departments. Certain of the features appearing in such forms have been embodied, and others have been added which, in our view, will increase the value of the record obtained. Provision is made in the model form for an estimate of the degree of qualification for promotion to the next grade of the officer reported on.

11. In considering the particular headings under which information should be required, we have borne in mind:

a) The object of the report, namely, to enable a comparison between candidates to be readily initiated by providing a reasonably accurate summary of their qualifications;

b) The fact that the reports will come from many sources, and the consequent difficulty of standardization;

c) The desirability of providing the clearest possible definition of the markings used.

12. Where the circumstances of any particular Department, Sub-Department, or Grade make it desirable to modify the model form, we contemplate that Departments will introduce such variations as seem necessary. We would direct attention, however, to the desirability of adopting a standard form for the general Civil Service classes.

13. The notes which appear on the back of the form are intended to serve as a guide to Reporting Officers when compiling their reports. The last of these notes indicates the procedure which we consider should be adopted in the case of adverse markings. In cases in which the latter are given in consequence of ill-health, it is left within the discretion of the Reporting Officer to withhold notification should he consider it desirable to do so on medical grounds. We do not think it necessary to notify an officer that he has been marked as not fitted for promotion solely on the ground of inexperience due to shortness of service in his present grade.

14. We attach importance to the provision that where an officer is marked as eminently fitted for special and early promotion the reasons for so marking him are to be fully given.

15. It will be observed that at the foot of the model Annual Report Form, reference is made to an additional form giving particulars of the professional and technical attainments of officers, i.e., degrees, diplomas, and other extra-official qualifications. We consider that a record should be kept in Depart-

ments of such particulars, the necessary facts being supplied by the officers themselves, and that the information so obtained should be entered on a suitable form to be annexed to the Annual Reports when promotions are under consideration.

16. The Report Forms of all Candidates, together with any recommendations which may be obtained from superior officers, should be available for the consideration of Promotion Boards in Departments in which such bodies are set up in accordance with our subsequent recommendations. Where promotion Boards are not set up, the Annual Reports should accompany any recommendation that is made to the Head of the Department.

V. NOTIFICATION OF VACANCIES

17. While recognising that the extent to which the following procedure is adopted must vary in different Departments, we recommend that vacancies occurring in posts which would be dealt with by Promotion Boards should normally be notified within a Department to those directly affected. It should be clearly intimated, however, that such notification is not intended to encourage applications. The institution of recognized machinery for making promotions should make applications unnecessary, except in cases in which the Head of a Department considers it desirable to invite them owing to exceptional circumstances.

18. We recognise the difficulty of prescribing any definite period which should elapse between the notification and the filling of a vacancy. It should normally be a sufficient period to enable the machinery set out in subsequent recommendations to operate, but there may be occasions on which it will be necessary for reasons of urgency to curtail this period or to fill a vacancy without notification.

VI. THE METHODS OF DEPARTMENTAL PROMOTION

19. We have taken account of the method of selection by examination which exists in certain branches of the Customs and Excise Service and elsewhere. We do not recommend any general application of this system, and we think that any suggestion for its extension to individual grades should be considered by the Departmental Councils concerned. In such event, the attention of those bodies, in our opinion, should be directed to the desirability of ensuring that, so far as possible, officers should be required to sit for such examinations only at an early stage in their careers.

20. Selection by examination is an exceptional method of promotion. The normal procedure is selection by the Head of a Department acting either on personal knowledge of the qualifications of candidates, or after consultation with such officers belonging to the Department as he may nominate for the purpose. In certain instances, the Head of the Department has instituted Promotion Boards in various forms ranging from those definitely constituted and acting in accordance with recognized procedure to informal Boards called together when required.

21. Where the staff of a Department is so large that the Head of it cannot be familiar with the qualities of every member of it, we consider that the institution of a Promotion Board (or Boards) appointed by the Head of the Department as a recommending Body (or Bodies) will normally be required. In any case in which the institution of a Promotion Board (or Boards) is considered by the Head of a Department to be unsuited to the circumstances of that Department an opportunity for full discussion of the subject should be afforded to the appropriate Whitley Body. Promotions to posts with salaries rising above 900£. a year should be regarded as outside the scope of the machinery recommended by us.

22. A departmental Promotion Board should normally include the Principal Establishment Officer or his Deputy, the Head of the Sub-Department in which the vacancy occurs, and one or more other Departmental Officers of experience and standing nominated by the Head of the Department.

23. The Board would call for any evidence likely to be of assistance to it.

24. In order to provide for the due consideration of any information in the possession of the staff or any representations that they may desire to put forward, the Promotion Board should take evidence from one, or in special cases more than one, representative nominated for the purpose by the Staff Side of the Departmental Whitley Council, or by the Staff Side of the District or Office Committee as may be appropriate in the particular case. It should be the duty of the Promotion Board to see that full opportunity is given to such representative or representatives of the Staff to furnish any information in possession of the Staff or to make any representations relevant to the matter before the Promotion Board, and full consideration should be given by the Promotion Board to such information and representations. It is contemplated that the Promotion Board will recall the Staff Side representative if the Board desires to hear further evidence from him before it reaches its conclusion.

25. The recommendation of the Promotion Board should be made in writing.

26. The adaptation of the machinery for making promotions to the circumstances of different Departments is a matter that should be left to be dealt with departmentally, but the actual machinery adopted in a Department should be clearly set forth in an official document for the information of all serving in the Department.

27. In a Department where no Promotion Board is instituted the Staff should be given equivalent opportunity for making representations or furnishing information in their possession.

28. We recognise that in exceptional cases, in which the public interest makes it necessary, it will remain within the competence of the Head of the Department to make any promotion without following the normal procedure.

29. It is provided in the Model Constitution for Departmental Whitley Councils that "it shall be within the competence of the Council to discuss any promotion in regard to which it is represented by the Staff Side that the

principles of promotion accepted by or with the sanction of the National Council have been violated." In addition to this we recommend that it should be open to any officer or officers to make representations to the Heads of the Department in regard to any promotion that has been made affecting him or them. Such representations should be made within some definite period of the announcement of the promotion, the period to be determined departmentally. Representations of this nature should be considered by the Head of the Department who would: (*a*) Deal with the case himself, with or without assessors. (*b*) Remit it to the Promotion Board for re-hearing. (*c*) Refer it to some other advisory Body for consideration.

Where the representations are based on the submission of new evidence, the normal procedure will be to remit the case to the Promotion Board. There may be cases in which the circumstances render one of the alternatives more suitable.

30. The Report of the Body considering such a representation should receive special consideration by the Promotion Board on the next filling of a vacancy, and in cases in which promotions are made in batches to a grade, the filling of a proportion of the vacancies should be deferred until after this opportunity for representation has been afforded.

31. An officer making such representations should be permitted to associate with himself a representative of the Staff Side of the appropriate Whitley Body or other member of the staff. In the event of his attending to make the representations at his own request he should pay his own expenses.

32. In all cases early notification of the appointments made should be given to the staffs concerned.

33. We consider that the machinery instituted in a Department for making recommendations for promotion should also be used for investigating and reporting upon:

a) The qualifications of members of the Clerical Class recommended by Heads of their respective Branches for admission to the Executive Training Grade, and the qualifications of members of the staff to be recommended by the Head of the Department to the Central Pooling Authority for admission to the Administrative Class.

b) The qualifications of Writing Assistants, Typists and Shorthand Typists for promotion, subject to trial on the higher duties, to the Clerical Class. In this connection we note that Departments have been requested in Treasury Circulars 59/20 (paragraph 14) and 4/21 (paragraph 10) to give immediate consideration to the claims of these classes for promotion to the Clerical Class. We recommend that adequate opportunities for trial on clerical duties be afforded to Writing Assistants, Typists and Shorthand Typists, to be selected by means of the above machinery with a view to ultimate promotion.

34. In large Departments it may not be possible for the Departmental Promotion Board itself to discharge the functions set out in paragraph 33,

and in such cases these should be performed by a Special Board or Boards constituted for the purpose. These Boards should consist of Departmental Officers selected with special reference to their suitability for advising in regard to the particular classes affected. The procedure in regard to representations and the taking of evidence should be same as in the case of a Promotion Board.

35. We have left over for further consideration the question of Departmental Machinery for investigating and reporting upon the qualifications of officers of a Department which has been asked to recommend members of its staff for appointment on promotion to other Departments.

36. Mr. H. Weston Wells served on the Committee until 9th March, 1921, and was subsequently replaced by Mr. J. H. Macrae-Gibson.

37. We desire to express our great indebtedness to Mr. E. C. E. Leadbitter and Mr. Hugh Shayler for the admirable manner in which they have carried out their duties as Secretaries of the Committee.

(*Signed*) O. Murray, *Chairman*
(*Signed*) W. E. Llewellyn, *Vice-Chairman*

10th August, 1921

APPENDIX

Confidential

MODEL FORM (Page 1)

ANNUAL REPORT ON MEMBERS OF THE STAFF

(TO BE RENDERED ON 1ST JANUARY)

January 19____.

Annual Report on Mr.................................... (*Name*)

.... (*Rank*)

Branch in which serving....................................

Date of Birth....................................

Date of entry into—

a) Public Service....................................

b) Department (if different from (a)....................

c) Present Grade....................................

For instructions for compiling the report, see page 2 (below):

(1)	Above Average of Grade (2)	Average of Grade (3)	Below Average of Grade (4)	Remarks (5)
1. Knowledge—				
a) of Branch....................				
b) of Department................				
2. Personality and Force of Character...				
3. Judgment........................				
4. Power of taking responsibility.......				
5. Initiative........................				
6. Accuracy........................				
7. Address and Tact..................				
8. Power of supervising Staff..........				
9. Zeal............................				
10. Official conduct..................				
General Remarks (including note of any specific qualifications not included above)				
Degree of qualification for promotion to next grade (*see* note 2 over)				

I hereby certify that in my opinion the conduct and standard of efficiency of the officer named hereon are stated.

Signature........................

Rank........................

(Certifying Officer)

....

Remarks

(HEAD OF SUB-DEPARTMENT)

(*For Professional and technical qualifications as supplied by the officer, see form annexed*)

Model Form (Page 2)

Notes and Instructions for compiling the Form

1. Insert in Columns 2, 3, or 4 the letter (*a*), (*b*), or (*c*) against each heading in Column 1 in accordance with the following order of appraisement:
   - *a*) Above average of Grade.
   - *b*) Average of Grade.
   - *c*) Below average of Grade.

2. Against the heading, "Degree of Qualification for promotion to next grade," an officer should be marked:
   - *a*) If eminently fitted for special and early promotion (if this marking is given the reasons for giving it are to be stated).
   - *b*) If fitted for promotion but not for exceptional promotion.
   - *c*) If not considered fit for promotion at present (if this marking is given the reasons for giving it are to be stated).

3. The remarks Column (5) is intended for use by the certifying officer, and to enable him to draw attention to any exceptional degree of qualification in the marking.

The space at the foot of the form is for the remarks of the Head of the Sub-Department.

4. These reports are to be regarded as confidential. If, however, an officer is marked "Below average of grade" in any of the qualifications mentioned in the headings of the report, or "not considered fit for promotion at present" for some cause other than inexperience or—where the Head of the Sub-Department considers it desirable for medical reasons—ill-health, he must be given in duplicate a written intimation that he has been so assessed under the particular heading or headings, with reasons where stated, and required to sign and return to the Establishment Officer one copy of the form of intimation as evidence that this direction has been complied with.

DOCUMENT NO. 7

AGREEMENT WITH REFERENCE TO ARBITRATION

Attention has already been called to the discontinuance of the Board of Conciliation and Arbitration in 1922, in pursuance of an economy program. Civil servants deplored the loss of this means of dealing with the Treasury and at once commenced a vigorous, organized agitation to restore the principle and practice of arbitration.

Sir Stanley Baldwin agreed to the principle of arbitration in 1923, and, after protracted negotiations, an agreement concerning arbitration machinery was reached in 1925. This agreement is reprinted as Document No. 7. It accepted the Industrial Court, established in 1919 for industrial disputes, as the arbitral tribunal, and opened the possibility of arbitration to (*a*) government departments, (*b*) recognized associations of civil servants, and by implication (*c*) the staff side of the Whitley Council. The subjects of arbitration were limited to claims affecting emoluments, weekly hours of work, and leave.

The government agreed, subject to the overriding authority of Parliament, to give effect to the awards of the court.

ARBITRATION COURT

SIR,

I am directed by the Lords Commissioners of His Majesty's Treasury to inform you that under the recommendations of the Committee appointed to consider the detailed arrangements necessary to give effect to the decision of the Government to accept the principle of arbitration for the Civil Service the necessary steps are now being taken to constitute an Arbitration Court.

The machinery for arbitration will be the Industrial Court established by the Industrial Courts Act, 1919. Where there is failure to agree on a claim falling within the limits set out below, the case will be reported to the Minister of Labour for reference to the Industrial Court. In accordance with Section I (3) of the Act the Court consists of such members of the Industrial Court as the President of the Court may direct; in the present case the Court will consist of a Chairman who will be either the President of the Industrial

Court or the Chairman of a Division of the Court together with one member drawn from a panel of persons appointed to the Industrial Court by the Minister of Labour as representing the Chancellor of the Exchequer for the time being, and one member from a panel of persons appointed to the Industrial Court by the Minister of Labour as representing the Staff Side of the National Whitley Council for the Administrative and Legal Departments of the Civil Service. Civil Servants and officials of Associations and Federations of classes of Civil Servants will be regarded as ineligible for appointment as members of the Court for this purpose.

Claims in respect of classes with salaries in excess of 700 pounds a year exclusive of bonus (except in cases of classes for which the scale of pay commences at a figure of less than 700 pounds a year but rises to a figure above 700 pounds a year, in both cases exclusive of bonus) will not be referred to the Court unless by the consent of both parties concerned in the claim.

Subject to this limitation, failing agreement by negotiation, arbitration by the Court will be open to Government Departments on the one hand and to recognised Associations of Civil Servants within the scope of the National Whitley Council for the Administrative and Legal Departments of the Civil Service and of Departmental Whitley Councils allied thereto on the other hand, on application by either party, in regard to certain matters affecting conditions of service.

The matters which may be taken to the Court will be claims affecting the emoluments, weekly hours of work and leave of classes of Civil Servants as defined in the following paragraph and cases of individual officers will be excluded.

The word "emoluments" for the purposes of the foregoing paragraph includes pay and allowances of the nature of pay, bonus and overtime rates, subsistence rates, travelling and lodging allowances. The word "class" means any well defined category of Civil Servants who for the purpose of a particular claim occupy the same position, or have a common interest in the claim.

It is intended that an endeavour should be made by the parties to agree the terms of reference or remit to the Court, but that where this is not practicable, the respective statements of claim should be set out and these will together constitute the terms of reference or remit.

Subject to the overriding authority of Parliament the Government will give effect to the awards of the Court.

I am, Your obedient Servant,

R. R. Scott

DOCUMENT NO. 8

THE INDUSTRIAL COURT ACT

Chapter 69, Acts of 1919, creates the industrial arbitration court which was accepted by civil servants and the government as the medium of arbitration within the civil service. Part 3 of the act, which continues a temporary wages regulation act of 1918, is omitted. Persons employed in the naval, military, or air services of the crown are specifically excluded from the benefits of the act, but other workmen employed by the crown were included from the outset.

CHAPTER 69

An Act to provide for the establishment of an Industrial Court and Courts of Inquiry in connection with Trade Disputes, and to make other provision for the settlement of such disputes, and to continue for a limited period certain of the provisions of the Wages (Temporary Regulation) Act, 1918. (20th November 1919.)

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

PART I

INDUSTRIAL COURTS

1. (1) For the purpose of the settlement of trade disputes in manner provided by this Act, there shall be a standing Industrial Court, consisting of persons to be appointed by the Minister of Labour (in this Act referred to as "the Minister"), of whom some shall be independent persons, some shall be persons representing employers, and some shall be persons representing workmen, and in addition one or more women.

(2) A member of the Industrial Court shall hold office for such term as may be fixed by the Minister at the time of his appointment.

(3) For the purpose of dealing with any matter which may be referred to it, the Court shall be constituted of such of the members of the Court as the president may direct.

(4) The president of the Court, and the chairman of any division of the Court, shall be such person, being one of the independent persons aforesaid, as the Minister may by order, given either generally or specially, direct.

2. (1) Any trade dispute as defined by this Act, whether existing or apprehended, may be reported to the Minister by or on behalf of either of the parties to the dispute, and the Minister shall thereupon take the matter into his consideration and take such steps as seem to him expedient for promoting a settlement thereof.

(2) Where a trade dispute exists or is apprehended, the Minister may, subject as hereinafter provided, if he thinks fit and if both parties consent, either—

a) refer the matter for settlement to the Industrial Court; or

b) refer the matter for settlement to the arbitration of one or more persons appointed by him; or

c) refer the matter for settlement to a board of arbitration consisting of one or more persons nominated by or on behalf of the employers concerned and an equal number of persons nominated by or on behalf of the workmen concerned, and an independent chairman nominated by the Minister, and, for the purpose of facilitating the nomination of persons to act as members of a board of arbitration, the Minister of Labour shall constitute panels of persons appearing to him suitable so to act, and women shall be included in the panels.

(3) The Minister may refer to the Industrial Court for advice on any matter relating to or arising out of a trade dispute, or trade disputes in general or trade disputes of any class, or any other matter which in his opinion ought to be so referred.

(4) If there are existing in any trade or industry any arrangements for settlement by conciliation or arbitration of disputes in such trade or industry, or any branch thereof, made in pursuance of an agreement between organizations of employers and organizations of workmen representative respectively of substantial proportions of the employers and workmen engaged in that trade or industry, the Minister shall not, unless with the consent of both parties to the dispute, and unless and until there has been a failure to obtain a settlement by means of those arrangements, refer the matter for settlement or advice in accordance with the foregoing provisions of this section.

3. (1) The Minister may make, or authorize the Industrial Court to make, rules regulating the procedure of that Court, and those rules may, amongst other things, provide for reference in certain cases to a single member of the Court, and provide for enabling the Court to sit in two or more divisions, and to sit with assessors, who may be men or women, for enabling the Court or any division of the Court to act notwithstanding any vacancy in their number, and for enabling questions as to the interpretation of any award to be settled without any fresh report or reference.

(2) The Minister may make rules regulating the procedure to be followed in cases where matters are referred for settlement to the arbitration of one or more persons appointed by the Minister.

(3) The Arbitration Act, 1889, shall not apply to any reference to the Industrial Court, or to any reference to arbitration under this Act.

(4) Where the members of the Industrial Court are unable to agree as to their award, the matter shall be decided by the chairman acting with the full powers of the empire.

(5) Where any trade dispute referred to the Industrial Court involves questions as to wages, or as to hours of work, or otherwise as to the terms or conditions of or affecting employment which are regulated by any Act other than this Act, the court shall not make any award which is inconsistent with the provision of that Act.

Part II

Courts of Inquiry

4. (1) Where any trade dispute exists or is apprehended, the Minister may, whether or not the dispute is reported to him under Part I. of this Act, inquire into the causes and circumstances of the dispute, and if he thinks fit, refer any matters appearing to him to be connected with or relevant to the dispute to a court of inquiry appointed by him for the purpose of such reference, and the court shall, either in public or in private, at their discretion, inquire into the matters referred to them and report thereon to the Minister.

(2) A court of inquiry for the purpose of this Part of this Act (in this Act referred to as "a court of inquiry") shall consist of a chairman and such other persons as the Minister thinks fit to appoint, or may, if the Minister thinks fit, consist of one person appointed by the Minister.

(3) A court of inquiry may act notwithstanding any vacancy in their number.

(4) The Minister may make rules regulating the procedure of any court of inquiry, including rules as to summoning of witnesses, quorum, and the appointment of committees and enabling the court to call for such documents as the court may determine to be relevant to the subject matter of the inquiry.

(5) A court of inquiry may, if and to such extent as may be authorized by rules made under this section, by order require any person who appears to the court to have any knowledge of the subject-matter of the inquiry to furnish, in writing or otherwise, such particulars in relation thereto as the court may require, and, where necessary, to attend before the court and give evidence on oath, and the court may administer or authorize any person to administer an oath for that purpose.

5. (1) A court of inquiry may, if it thinks fit, make interim reports.

(2) Any report of a court of inquiry, and any minority report, shall be laid as soon as may be before both Houses of Parliament.

(3) The Minister may, whether before or after any such report has been laid before Parliament, publish or cause to be published from time to time, in such manner as he thinks fit, any information obtained or conclusions arrived at by the court as the result or in the course of their inquiry:

Provided that there shall not be included in any report or publication made or authorized by the court or the Minister any information obtained by the court in the course of their inquiry as to any trade union or as to any individual business (whether carried on by a person, firm, or company) which is not available otherwise than through evidence given at the inquiry, except with the consent of the secretary of the trade union or of the person, firm, or company in question, nor shall any individual member of the court or any person concerned in the inquiry, without such consent, disclose any such information.

. . . .

Part IV

General

7. Any expenses incurred by the Minister in carrying this Act into operation, including the expenses of the Industrial Court and of any court of inquiry, shall be paid out of moneys provided by Parliament.

8. For the purposes of this Act:—The expression "trade dispute" means any dispute or difference between employers and workmen, or between workmen and workmen connected with the employment or non-employment, or the terms of the employment or with the conditions of labour of any person. The expression "workman" means any person who has entered into or works under a contract with an employer whether the contract be by way of manual labour, clerical work, or otherwise, be expressed or implied, oral or in writing, and whether it be a contract of service or of apprenticeship or a contract personally to execute any work or labour.

9. Provision shall be made by rules under this Act with respect to the cases in which persons may appear by counsel or solicitor on proceedings under this Act before the Industrial Court, before an arbitrator or before a court of inquiry, and except as provided by those rules no person shall be entitled to appear on any such proceedings by counsel or solicitor.

10. This Act shall not apply to persons in the naval, military, or air services of the Crown, but otherwise shall apply to workmen employed by or under the Crown in the same manner as if they were employed by or under a private person.

11. In the case of a trade dispute in the industry of agriculture, steps to be taken under this Act by the Minister of Labour shall be taken in conjunction with the Board of Agriculture and Fisheries.

12. (1) In the application of this Act to Scotland a reference to an oversman shall be substituted for any reference to an umpire, and a reference to the Board of Agriculture for Scotland shall be substituted for any reference to the Board of Agriculture and Fisheries.

(2) In the application of this Act to Ireland, a reference to the Department of Agriculture and Technical Instruction for Ireland shall be substituted for any reference to the Board of Agriculture and Fisheries.

13. The Minister shall from time to time present to Parliament a report of his proceedings under this Act.

14. This Act may be cited as the Industrial Courts Act, 1919.

DOCUMENT NO. 9

CLAUSE V, TRADE DISPUTES AND TRADE UNIONS ACT, 1927

17 and 18 Geo. V, c. 22

On the occasion of the general strike of May, 1926, some civil service associations were affiliated with the Trade Union Congress and with the Labour party. The leaders of some of the civil service associations, acting through a staff side committee of the National Whitley Council, advised their members not to volunteer to perform service other than the regular duties pertaining to their office or employment. No civil service trade union joined the strike, although some collected and disbursed funds to aid the strikers, and the sentiment of some groups of civil servants was warmly in favor of the strike movement.

In the spring of 1927 the government introduced the well-known Trade Disputes and Trade Unions Act, intended to prohibit "sympathetic" strikes or lockouts, or strikes or lockouts "designed or calculated to coerce the government either directly or by inflicting hardship upon the community."

Clause V of this act undertook to make a clean separation between civil service associations or trade unions and (*a*) outside trade unions, (*b*) political parties. This clause, which was received by some civil service groups with equanimity, and by others with deep indignation, is reprinted in the following paragraphs.

5. Regulations as to organisations of which established civil servants may be members.[1]

(1) Amongst the regulations as to the conditions of service in His Majesty's civil establishments there shall be included regulations prohibiting established civil servants from being members, delegates, or representatives of any organisation of which the primary object is to influence or affect the remuneration and conditions of employment of its members, unless the organisation

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[1] See Statutory Rules and Orders, 1927, No. 800, for regulations applying to this section.

is an organisation of which the membership is confined to persons employed by or under the Crown and is an organisation which complies with such provisions as may be contained in the regulations for securing that it is in all respects independent of, and not affiliated to, any such organisation as aforesaid the membership of which is not confined to persons employed by or under the Crown or any federation comprising such organizations, that its objects do not include political objects, and that it is not associated directly or indirectly with any political party or organisation:

Provided that the regulations made in compliance with the provisions of this section shall not prevent—

a) any person who is at the commencement of this Act an established civil servant from remaining a member of any trade union or organisation not composed wholly or mainly of persons employed by or under the Crown of which he had, at the commencement of this Act, been a member for more than six months, if under the rules thereof there had on the fourth day of April, nineteen hundred and twenty-seven, accrued or begun to accrue to him a right to any future payment during incapacity, or by way of superannuation, or on the death of himself or his wife, or as provision for his children; or

b) any person employed at the commencement of this Act by or under the Crown who thereafter becomes an established civil servant from remaining, so long as he is not appointed to a position of supervision or management, a member of any trade union or organisation, not composed wholly or mainly of persons employed by or under the Crown, of which he is a member at the date when he so becomes an established civil servant, if under the rules thereof there has at that date accrued, or begun to accrue, to him a right to any future payment during incapacity, or by way of superannuation, or on the death of himself or his wife, or as provision for his children; or

c) a person who in addition to being an established civil servant is, apart from his service as such, also engaged in some other employment or occupation from being a member, delegate, or representative of any trade union or organisation, of which the primary object is to influence or affect the remuneration or conditions of employment of persons engaged in that employment or occupation.

(2) Subject as hereinafter provided, any established civil servant who contravenes the regulations made under this section shall be disqualified for being a member of the Civil Service:

Provided that, in the case of a first offence, a civil servant shall forthwith be warned by the head of his department, and the said disqualification shall not take effect if within one month after such warning the civil servant ceases to contravene the said regulations.

(3) In this section—

a) the expression "established civil servant" means a person serving in an established capacity in the permanent service of the Crown, and includes any person who, having been granted a certificate by the Civil Service Commissioners, is serving a probationary period preliminary to establishment; and

b) the expression "conditions of employment" means in relation to persons other than persons employed by or under the Crown the conditions of employment of persons employed under a contract of service.

THE CIVIL SERVICE OF THE DOMINION OF CANADA

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INTRODUCTION

The British North America Act, 1867,[1] is in part the written constitution of the Dominion of Canada. By Sec. 12 of that act it was provided that all powers, authorities, and functions, under any provincial acts in force at the date of confederation, which were applicable to the new Dominion, were vested in and exercisable by the governor-general in council of the newly formed Dominion. In 1857, the government of the Province of Canada had passed a civil service statute[2] which, by the application of Sec. 12 of the British North America Act, became the first civil service statute of the Dominion of Canada.

The statute of 1857 provided that employees in each department were to be divided into two classes, officers and clerks, the term "officer" being applied to deputy heads and other high officials, the remainder of the staff being termed "clerks"; they were divided into first, second, third, and fourth, or probationary class, clerks. Entrance to the service was by qualifying examination, upon nomination of the candidate by the head of a department. The qualifying examinations were conducted by a board of examiners, consisting of twelve deputy heads of departments, whose duties were to frame and publish regulations, to examine candidates, to keep a record of all candidates and their standing in examinations, and to grant certificates of qualification to successful candidates. Appointments were required to be made only from persons qualified by examination. Vacancies in the service were filled by promotion of clerks in the same department, or if no suitable persons were there available, then by promotion from some other department, but only in case the latter was impossible could the vacancy be filled by qualified persons outside the service. Promotion was granted by the head of a department after a fixed period of service in a class. Immediate control and regulation of personnel in each department, including hiring and firing, was vested in the head or deputy head, subject to the general regulations of the board of examiners.

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[1] 30–31 Vic., c. 3 (1867).

[2] Statutes, Province of Canada, 20 Vic., c., 24.

The statute of 1857 thus set up a closed service, recruited through qualifying examinations conducted by semipolitical chiefs. The first civil service system in Canada was, consequently, more of a political or spoils system than a merit system.

In 1867, the newly established Dominion government took over, almost in its entirety, the personnel of the civil service of the Canadian provincial government, recruiting its service, as further needs arose, from the personnel of the civil services in the Maritime Provinces.

In 1868, the Parliament passed the first Civil Service Act of the Dominion of Canada.[1] That statute largely adopted the provisions of the provincial statute of 1857 but made some changes. It classified the service in four groups, deputy heads, officers or chief clerks, clerks, and probationary clerks. For appointment it was required that the candidate be nominated by the head of a department to the civil service board, that the civil service board should examine the candidate, and that no appointments might be made without nomination and examination. Appointees were required to be between the ages of eighteen and twenty-five; if over twenty-five, reasons for appointment had to be given, and if over forty years of age, reasons for the appointment had to be given to Parliament.

Probationary clerks were required to serve at least one year before promotion; if they were not promoted at the end of two years their employment ceased. Clerks were divided into three classes, first, second, and third. Third-class clerks were required to serve five years before promotion to the next class. Second-class clerks were divided into two subdivisions, junior and senior, the junior being required to serve five years before promotion. The senior second-class and first-class clerks might be promoted at any time. The basis of classification within these groups was salary rate.

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[1] 31 Vic., c. 34 (1868) (Canada). The civil service statutes of Canada until 1918–19 applied almost solely to the inside service at Ottawa. The outside service, scattered throughout Canada and consisting of the officials of such departments as customs, inland revenue, public works and post-office, has always been organized on a patronage basis; even the Act of 1919 provides that appointments to the outside service shall be made from among residents of the locality in which the vacancy occurs. Patronage in Canada does not mean spoils in the Jacksonian sense; if a postmaster is appointed by one party, he ordinarily retains office till he dies or resigns; when the vacancy does occur, the party in power finds adequate reasons for rewarding its favorite resident in that district with the appointment. The spoils system, meaning thereby the complete and immediate change in administrative personnel whenever a different party obtains control, has never flourished to any appreciable degree in Canada.

The Act of 1868 also created a civil service board consisting of fourteen deputy heads. The duties of the civil service board were to frame and publish regulations, to examine nominated candidates, to establish eligible lists of nominees, stating therein by whom nominated, to grant certificates of qualification, and to investigate and report on promotions to heads of departments, to report on infractions of rules and regulations, and to report on questions of nomination, appointment, promotion, salary, efficiency, and welfare referred to them.

In the fourteen years between 1868 and 1882, there were four investigations and reports[1] on conditions in the civil service, resulting in 1882[2] in an attempt to lessen the evils of patronage by a new statute, which, with amendments in 1883[3] and 1884[4] and consolidation in 1885[5] became the Civil Service Act, Revised Statutes of Canada, 1886, chapter 17.

The Civil Service Statute of 1886 (consolidation of 1885) set up a board of examiners consisting of three members, and reclassified the service. The duties of the board of examiners were to examine all candidates, to give certificates of qualification, and to establish a list of qualified candidates. Seven classes were established, deputy heads, professional and technical officers, chief clerks, first-class clerks, second-class clerks, third-class clerks, and messengers, packers, and sorters.

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[1] Sessional Papers, Canada, 1870, No. 64; Journals, House of Commons, Canada, 1877, Appendix No. 7; Sessional Papers, Canada, 1880–81, No. 113; Sessional Papers, Canada, 1882, No. 32.

[2] 45 Vic., c. 4 (Canada).

[3] 46 Vic., c. 7 (Canada).

[4] 47 Vic., c. 15 (Canada).

[5] 48–49 Vic., c. 46 (Canada).

The statute provided that all officials except deputy heads must have passed a qualifying examination and must have served a probationary term of six months before their appointment might become permanent. Deputy heads of departments were appointed by the governor in council and reasons for their removal were required to be laid on the table of both Houses of Parliament.

Appointments to the service were made by the head of each department, and were to be made, as need arose, from the list of qualified persons established by the board of examiners. Appointees thereupon became probationers for six months and might be discharged by the head of the department within the first year from date of appointment. Technical and professional officers were not subjected to a qualifying examination, if they were certified for appointment, by the head of the department.

Promotions were made by the head of the department from those lower in the service, who had passed a special qualifying examination. Subjects for promotional examinations were determined by the deputy head and head of the department in which the vacancy, to be filled by promotion, existed. Each year, the deputy head of each department estimated the number of vacancies to be filled by promotion and "the number so estimated shall be those with reference to which the examinations for promotion shall be held." Temporary clerks might be appointed when needed by heads of departments, if previously qualified by the board of examiners.

Discipline was maintained within each department by the head or deputy head, who was empowered to suspend and to stop pay for misconduct or negligence.

In the period from 1885 to 1908, many minor amendments to the statute were made; in 1900[1] an amendment added a junior second class to the classification of the service, and in 1903[2] salary schedules were changed and some slight reclassification was provided for.

Toward the end of this period it was found that the powers of the board of examiners were too restricted and the powers of the heads of departments were too extensive. Thousands of appointments and promotions were being and had been made over which the board had no control, and a huge body of temporary clerks entered the service who had as steady employment as the so-called permanent staff. As the result of an investigation by a Royal Commission which reported in 1907–8, the Civil Service Amendment Act of 1908,[1] which reorganized the service, was passed.

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[1] 63–64 Vic., c. 14 (Canada).

[2] 3 Edw., VII, c. 9 (Canada).

Three important changes in the organization of the inside service were made by the statute of 1908; a civil service commission was established, the service was reclassified, and all appointments, except of deputy heads, technical and professional officers, and of messengers and sorters, were placed on a competitive and merit basis.

The civil service commission was to consist of two members, with rank equal to that of a deputy head of department. The commissioners' term of office was during good behavior and they were removable on address of the Senate and House of Commons. The duties of the commission were to test candidates for admission and promotion; to issue certificates to successful candidates; and to investigate and report on the operation of the Civil Service Act and regulations, as well as on the organization of any department, at the request of the head of that department.

The service was reclassified and divided into first, second, and third divisions, the classification being based upon salary rate. The three divisions were divided into two subdivisions, A and B. First Division A consisted of assistant deputy heads and the principal technical and professional officers. First Division B consisted of chief clerks and lesser technical and professional officers. Second Division A consisted of executive and technical clerks, who, under the statute of 1885, had been known as chief clerks. Second Division B consisted of subordinate executive clerks, known as senior second-class clerks under the statute of 1885. Third Division A consisted of copying and routine-work clerks, classed as junior second class under the statute of 1885. Third Division B consisted of temporaries, messengers, etc., classed as third-class clerks and temporaries under the statute of 1885.

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[1] 7–8 Edw., VII, c. 15 (Canada).

Except for deputy heads, and technical and professional officers and messengers, all appointments were required to be made only after competitive examination to determine the qualifications of candidates "for the particular position to which they are to be appointed." Before holding examinations, the commission was required to get estimates of the number of vacancies to be filled from the heads of departments. After the examination, the commission was to establish an eligible list in order of merit, from which the commission was to fill vacancies on the request of the head of the department. Selection from the list was ordinarily to follow the order of the list, but the commission was given power to select otherwise if special and particular qualifications were evident. The head of the department was given power to reject any appointee after two months' service, upon written reasons from the deputy head. Each appointee was on probation for six months. At the successful completion of that term, his appointment became permanent. Temporaries might be appointed, if qualified, but might not serve more than four months in any one year.

Promotion was achieved through recommendation by the head and deputy head of the department and on receipt of a certificate of qualification, with or without examination, as required by the regulations of the commission. Vacancies in upper divisions were required to be filled by promotion from lower divisions if at all possible. Efficiency records were required to be kept by each department for second- and third-division clerks, and each year reports on efficiency and service were required to be sent to the civil service commission by each department.

The Act of 1908 put the service on a higher educational basis for appointment and promotion than it had ever been before, although many loopholes still existed in the statute, as in the provisions for appointment of technical and professional officers without examination. During the war, the civil service of

Canada expanded to unwieldy proportions as it did in every other belligerent state. The difficulties occasioned by the war, together with the inadequacies of the Act of 1908, resulted in 1918–19[1] in the last general statutory reorganization to date of the civil service of Canada.

The Statute of 1918–19, under which the civil service of Canada is now regulated, is divided into five parts: control and direction, organization and classification, appointments and examinations, conditions of service, and exceptions.

The civil service commission of three members has been given complete control of the service, both with respect to regulation and with respect to recruitment, subject to the supervision of the governor in council. The statute provides that all appointments are to be made to the service by the commission or as Sec. 20 provides: "Except where otherwise expressly provided, all appointments to the civil service shall be upon competitive examination under and pursuant to the provisions of this Act and shall be during pleasure."[2] Sec. 2 provides that vacancies are to be notified to the civil service commission by deputy heads, whereupon the commission appoints "the person whose name stands highest upon the commission's list of eligible persons for the class"; that is, the commission, in appointing, follows the rule of one.

As to promotions, the statute provides that "promotions shall be made for merit by the Commission upon such examination, reports, tests, records, ratings or recommendations as the Commission may by regulation prescribe."

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[1] 8–9 Geo. V, c. 12; 10 Geo. V, c. 10; 10–11 Geo. V, c. 41; 11–12 Geo. V, c. 22; 15–16 Geo. V, c. 35.

[2] It is to be noted, however, that Sec. 20 provides "except where otherwise expressly provided." These five words have permitted administrative patronage to continue and increase in the service notwithstanding the precise and all-embracing terms of the remainder of the section. According to a recent memorandum prepared for the civil service commission: "The exemptions thus far are in excess of thirty three and one third per cent of the total personnel; thus confining appointments to those positions to favourites of a political party." Exemptions are made by statute and by Order in Council, the total number of appointments not subject to the Civil Service Statute being estimated at 17,923. The foregoing memorandum further states: "Political patronage flourishes supreme in public contracts and purchase of supplies. Each of the two political parties takes turns in distributing sales and contracts among their respective followers."

As to discipline, the statute gives to the head or deputy head power to suspend for "misconduct or negligence in the performance of his duties," but only the governor in council has power to dismiss a permanent employee.

The statute of 1918–19 eliminates from the civil service of Canada much of the patronage which existed under previous statutes. The Canadian service has been placed more nearly on a merit basis than it has ever been before. Where patronage exists, it is exercised, first, with respect to positions subject to the statute, chiefly through the creation of new posts, and the juggling of advertised requirements to suit a favored individual, and, second, with respect to other positions, as a consequence of express statutory exemption. In general, however, and particularly where the Minister and the commission work in a bona fide manner to eliminate patronage, the present statute has placed the rank and file of the Canadian civil service on a merit basis.

In addition to official efforts tending to the professionalization of the Canadian service and its establishment on a merit basis, various organizations of civil servants have been formed, chiefly for the purpose of representing the needs of individual services to the government, but also for the purpose of improving conditions in the service by making the work more attractive and improving morale. These particularistic associations are now tending to merge in a federal association which can represent the needs of the service as a whole to the government.

Many of the associations of civil servants which exist at present are small in numbers and consequently are of slight importance. Five of them are, however, of outstanding importance: the Civil Service Federation, the Civil Service Association, the Professional Institute, the Postal Workers, and the Amalgamated Civil Servants Association.

The government, at the end of 1928, established an advisory council to assist in administering the Civil Service Superannuation Act, the council to consist of five members from the administration and five from the employees. The advisory council is, in form, in organization, and in method of work (but not in scope) very similar to the Whitley Council as established by the British government for the civil service at the end of the World War. The five members of the administrative side of the council include three members from the Department of Finance, one from the Department of Justice, and one from the Department of Insurance. Official representatives are nominated by the deputy heads of the respective departments and retain their seats at the pleasure of the deputy heads who nominated them.

On the employees' side of the advisory council each of the following five associations of civil servants nominate one member to represent the employees: the Civil Service Federation, the Civil Service Association, the Professional Institute, the Postal Workers, and the Amalgamated Civil Servants Association.

The council is to act in an advisory way, reporting to the Treasury Board on the following three classes of questions: (1) questions of a general nature in connection with the administration of the Superannuation Act; (2) specific questions which may be referred to the Treasury Board; (3) proposed amendments to the Superannuation Act and Regulations.

The Civil Service Statute and the Regulations of the Civil Service Commission of Canada follow.

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DOCUMENT NO. 1

AN ACT RESPECTING THE CIVIL SERVICE OF CANADA

SHORT TITLE

1. This Act may be cited as the Civil Service Act. 1918, c. 12, s. 1.

INTERPRETATION

2. In this Act and in all regulations made hereunder, unless the context otherwise requires,

a) "civil service" means the civil positions and employees in and under the several departments of the Government of Canada, and in the offices of the Auditor General, the Clerk of the Privy Council, the Governor General's Secretary, the Public Archives, the Board of Railway Commissioners for Canada, the Civil Service Commission, and all other civil positions under and persons in the civil employ of His Majesty, but not including the members of any commission or board appointed by the Governor in Council;

b) "Commission" means the Civil Service Commission;

c) "deputy" or "deputy head" means and includes the deputy of the Minister of the Crown presiding over the department, the Clerk of the Privy Council, the Clerks of the Senate and House of Commons, the Librarians of Parliament, the Comptroller of the Royal Canadian Mounted Police, the Superintendent of Insurance, the Dominion Archivist, the Board of Railway Commissioners for Canada and, in all cases in which such meaning is not inconsistent with his powers and duties under the Consolidated Revenue and Audit Act, the Auditor General;

d) "employee" means and includes officers, clerks, and employees in the civil service, but does not include deputy heads;

e) "head of the department" means the Minister of the Crown for the time being presiding over the department and includes the Speakers of the Senate and House of Commons;

f) "the war" means the war declared by His Majesty on the fourth day of August, one thousand nine hundred and fourteen, against the Empire of Germany and, subsequently, against other powers. 1918, c. 12, s. 2; 1919 (2nd session). c. 10, s. 2; 1921, c. 22, s. 2; 1921, c. 23, s. 1.

PART I. CONTROL AND DIRECTION OF THE SERVICE

CIVIL SERVICE COMMISSION

3. There shall be a Commission called the Civil Service Commission, consisting of not more than three members appointed by the Governor in Council.

2) The Governor in Council may appoint one of the commissioners to be the chairman of the Commission.

3) The commissioners in office on the twenty-fourth day of May, one thousand nine hundred and eighteen shall hold office during good behaviour. Each subsequently appointed commissioner shall hold office during good behaviour for a period of ten years from the date of his appointment, save that his tenure of office shall cease upon his attaining the age of sixty-five years.

4) Any commissioner may be removed from office at any time by the Governor General, on address of the Senate and House of Commons.

5) The rank and standing of each commissioner shall be that of a deputy head.

6) There shall be paid out of the Consolidated Revenue Fund of Canada to the chairman, a salary of seven thousand dollars and to each of the other commissioners a salary of six thousand dollars per annum.

7) A commissioner shall not hold any other office in the civil service or engage in any other employment.

8) Each commissioner shall, before entering upon the duties of his office, take and subscribe before the Clerk of the Privy Council, the oath in Schedule A of this Act. 1918, c. 12, ss. 3 and 4; 1919 (2nd session), c. 10, s. 3.

POWERS AND DUTIES OF THE COMMISSION

4. The duties of the Commission shall be,

a) to test and pass upon the qualifications of candidates for admission to, and transfer and promotion in, the civil service and to issue certificates with respect thereto required under this Act or regulations made hereunder;

b) of its own motion to investigate and report upon the operation of this Act, and upon the violation of any of the provisions hereof or of any regulation made hereunder; and, upon the request of the head of a department, to investigate and report upon any matter relative to the department, its officers, clerks, and other employees;

c) to report upon the organization or proposed organization of the departments or any portion of any department or of the civil service, and upon any proposed change in such organization;

d) to obtain the assistance of competent persons to assist the Commission in the performance of its duties;

e) to make an annual report on the organization and staff, including the duties and salaries of such staff, of each portion of the civil service;

f) to arrange for the transfer of supernumeraries or other officers, clerks and employees from portions of the civil service where they are no longer required to other portions of the civil service where they are required;

g) such other duties as are assigned to it by the Governor in Council.

2) The deputy heads and all other officers and employees in the civil

service shall give the Commission such access to their respective departments and offices and such facilities, assistance and information as the Commission may require for the performance of its duties.

3) In connection with, and for the purposes of, any investigation or report, the Commission or any commissioner holding an investigation shall have all the powers of a commissioner appointed under Part II of the Inquiries Act.

4) The Commission shall make an annual report and statement of the transactions and affairs of the Commission during the year then next preceding, and such report shall be laid before Parliament. 1918, c. 12, s. 4; 1919 (2nd session), c. 10, s. 8.

REGULATIONS

5. The Commission may make such regulations as it deems necessary or convenient for carrying out the provisions of this Act, including regulations governing the performance by the Commission of its own duties hereunder.

2) All such regulations shall be subject to the approval of the Governor in Council and shall be published in the *Canada Gazette*. 1918, c. 12, s. 4; 1919 (2nd session) c, 10, s. 8.

DEPUTY HEADS

6. A deputy head for each department of the Government shall be appointed by the Governor in Council, and shall hold office during pleasure.

2) No officer shall be raised to the rank of deputy head, except in the case of a vacancy occurring or when a new department is created by Act of Parliament.

3) Whenever a deputy head is removed from his office, a statement of the reasons therefor shall be laid on the table of both Houses of Parliament within the first fifteen days of the next following session. 1918, c. 12, s. 46.

7. The deputy head of a department shall, subject to the directions of the head of the department, oversee and direct the officers, clerks and employees of the department, have general control of the business thereof, and perform such other duties as are assigned to him by the Governor in Council.

2) A deputy head shall give his full time to the civil service, and shall discharge all duties required by the head of the department, or by the Governor in Council, whether such duties are in his own department or not. 1918, c. 12, s. 47.

8. Unless otherwise provided by the Governor in Council, in the absence of any deputy head, the assistant deputy head, or if there is no assistant deputy head, or the assistant deputy head is absent, an officer or clerk named by the head of the department shall have the powers and perform the duties of such deputy head.

2) There shall be in the office of the Auditor General an assistant auditor general who shall act for the Auditor General in his absence. 1918, c. 12, s. 48.

PART II. ORGANIZATION, CLASSIFICATION AND COMPENSATION OF THE SERVICE

ORGANIZATION OF DEPARTMENTS

9. The Commission shall, after consulting with the several deputy heads, the heads of branches and other chief officers, prepare plans for the organization of each department and of each branch or portion of the civil service, such organization to follow, as far as possible, the same general principles in all branches of the civil service.

2) As soon as the plan of organization is completed for any branch or portion of the civil service, such plan of organization shall be submitted for the approval of the Governor in Council.

3) If, after such approval, the deputy head or the Commission is of opinion that any such plan of organization might with advantage be in any way changed, the Commission shall, in a similar manner, prepare a report upon such proposed change, and shall submit the same for the approval of the Governor in Council. No change shall be made in the organization of any department until it has been so reported upon by the Commission.

4) As soon as any plan of organization is confirmed by the Governor in Council, the deputy head shall, subject to the approval of the Commission, forthwith cause the officers, clerks and employees affected thereby to be reclassified for the purpose of placing each officer, clerk and employee in a proper place under such plan of organization.

5) If, after such organization and classification has been effected, the number of officers, clerks, and employees in any portion of the civil service, or in any class or grade thereof, is greater than the number allowed under such organization, the remainder shall be supernumeraries in that class or grade respectively in which they rank, and shall so remain until they are placed in any vacancies that may occur or until they are transferred to another portion of the civil service, or until they leave such service. 1918, c. 12, s. 9; (2nd session), c. 10, s. 4.

CLASSIFICATION OF THE SERVICE

10. The civil service shall, as far as practicable, be classified and compensated in accordance with the classification of such service dated the first day of October, one thousand nine hundred and nineteen, signed by the Commission and confirmed by chapter ten of the statutes of the year one thousand nine hundred and nineteen, second session, and with any amendments or additions thereto thereafter made; and references in this Act to such classification shall extend to include any such amendments or additions.

2) The Commission may, as it from time to time deems necessary,

a) establish additional classes and grades and classify therein new positions created or positions included or not included in any class or grade established in the said classification; and

b) divide, combine, alter, or abolish existing classes and grades.

3) Each such class shall embrace all positions similar in respect to the duties and responsibilities appertaining thereto and the qualifications required for the fulfilment thereof, and shall be given a classification title indicative of the character and rank of the employment.

4) The statement of duties made in defining a class in the classification shall not affect the powers or duties of any employee under any statute or the power of a head of a department or a deputy head to control and direct the work of any employee under such head or deputy head.

5) Any change in the duties of a position which, in the opinion of the Commission, is material, shall operate to abolish it and to create a new position which shall be classified by the Commission under this section.

6) The classification title prescribed under subsection three of this section shall be observed in all records and communications of the Commission, the Auditor General and the Treasury Board, and in all departmental estimates and parliamentary returns and appropriations, but need not be used for other departmental purposes. 1919 (2nd session), c. 10, s. 10.

11. The Commission shall, after consultation with the several deputy heads, determine the places in such classification of the positions which, on the tenth day of November, one thousand nine hundred and nineteen, existed in the civil service.

2) In classifying any position the Commission shall take into consideration the character and importance of the work which the incumbent is performing at the time the position is classified.

3) Employees shall take the classification of their respective positions, but no temporary employee shall be given a permanent position as a result of such classification, except upon examination under the provisions of this Act or without examination under regulations made by the Commission and approved by the Governor in Council.

4) No permanent employee who was appointed before the tenth day of November, one thousand nine hundred and nineteen, shall have the salary of his position on that date reduced by reason of the classification of his position, and if any such employee is placed in any class where the maximum salary is smaller than the maximum salary of the subdivision or grade in which he was before classified he shall be entitled in the same manner and to the same extent as heretofore to increases until he has reached the maximum fixed for the subdivision or grade in which he was previously classified. 1919 (2nd session), c. 10, s. 11.

COMPENSATION

12. The Commission shall, from time to time, as may be necessary, recommend rates of compensation for any new classes that may be established hereunder, and may propose changes in the rates of compensation for existing classes.

2) In each class there shall be a minimum and a maximum salary rate and

such intermediate rates as may be considered necessary and proper to provide increases between the minimum and maximum.

3) Such proposed rates of compensation shall become operative only upon their approval by the Governor in Council, and, where any increased expenditure will result therefrom, when Parliament has provided the money required for such increased expenditure. 1919 (2nd session), c. 10, s. 10.

13. The rate of compensation of an employee upon appointment to a position in any class in the civil service shall be at the minimum rate prescribed for the class; provided, however, that when the appointee is already in the civil service in another position, the rate of compensation upon appointment to the new position either through transfer or promotion shall be the same as that received before such new appointment, or, if there be no such rate for the new class, then at the next higher rate, but no appointment shall in any case be made at less than the minimum nor at more than the maximum rate prescribed for a class. 1919 (2nd session), c. 10, s. 10.

14. The rate of compensation of an employee, who has not reached the maximum rate of compensation of the class in which he is serving, may be increased upon the recommendation of the deputy head approved by the Commission, but no such recommendation shall be approved unless it is accompanied by a statement of the deputy head supported by such evidence and records as the Commission may require, that the employee has rendered meritorious service and has increased his usefulness in the service.

2) Such increase shall be to the next higher rate for the class, and the new rate shall become effective at the next quarterly date after its approval by the Commission, that is to say, either the first day of January, April, July or October.

3) No employee whose rate of compensation exceeds six hundred dollars per annum shall receive an increase under the provisions of this section more than once in each year, unless such employee be classified in a position in respect of which the classification provides for semi-annual instead of annual increases or compensation. 1919 (2nd session), c. 10, s. 10; 1920, c. 41, s. 4.

15. The rate of compensation for a temporary employee appointed after the tenth day of November, one thousand nine hundred and nineteen, shall be the minimum rate of the class to which his position is assigned.

2) In the case of temporary employees required in Canada outside the city of Ottawa, if such minimum rate be less than the prevailing rate of pay for the work incident to the position in the place or locality where the work is required to be performed, the Commission may engage a temporary employee at such prevailing rate instead of the minimum rate, if the said prevailing rate does not exceed the maximum rate of the class in which the position is classified.

3) No temporary employee shall be deemed to be eligible to receive any increase of compensation under the provisions of this Act. 1919 (2nd session), c. 10, s. 10; 1920, c. 41, s. 4.

16. The Commission shall make regulations under which the deputy head may, for sufficient reason, authorize the payment to employees, not in administrative or executive positions, of such additional remuneration as may be prescribed in such regulations, for work done outside of prescribed hours. 1919 (2nd session), c. 10, s. 10.

ADDITIONAL PAYMENTS

17. In the absence of special authority of Parliament no payment additional to the salary authorized by law shall be made to any deputy head, officer, clerk or employee permanently employed in the civil service in respect of any service rendered by him, whether in the discharge of his ordinary duties of office or of any other duties which may be imposed upon him, or which he may undertake or volunteer to discharge or otherwise perform.

2) Nothing in this section is intended to prohibit the payment to any officer, clerk or employee of a separate annual salary from each of two or more departments or distinct branches of the civil service in respect of separate duties performed for each of such departments or branches respectively, if one of such salaries is not sufficient to compensate him for his whole time, and if the aggregate salaries do not, in the opinion of the deputy head, concurred in by the Commission, exceed reasonable compensation for the discharge of all the duties so performed. 1918, c. 12, s. 22.

POSITION LISTS

18. The Commission shall prepare a complete list of the employees in the civil service and shall furnish the Auditor General with a copy thereof; and shall also forthwith notify the Auditor General of the name, classification, title, salary and the department of each person appointed to or removed from the service, and of each employee in the service whose status as to position or salary is changed. 1919 (2nd session), c. 10, s. 10.

PART III. APPOINTMENTS AND EXAMINATIONS, ETC.

APPOINTMENTS

19. Save as otherwise provided in this Act or in any regulation made hereunder, neither the Governor in Council nor any minister, officer of the Crown, board or commission, shall have power to appoint or promote any employee to a position in the civil service. 1918, c. 12, s. 53; 1919 (2nd session), c. 10, s. 12.

20. Except where otherwise expressly provided, all appointments to the civil service shall be upon competitive examination under and pursuant to the provisions of this Act, and shall be during pleasure. 1918, c. 12, s. 10; 1919 (2nd session), c. 10, s. 10.

21. Every deputy head shall notify the Commission of every vacancy in any position in his department immediately after the vacancy occurs, and

whenever such vacancy is to be filled, the deputy head shall request the Commission to make an appointment.

2) The Commission shall thereupon appoint the person whose name stands highest upon the Commission's list of eligible persons for the class in which the position is found and who is willing to accept the appointment; in case there is no such list for the class, the Commission shall forthwith hold an examination and, if necessary to prevent any serious interference with the public business, but not otherwise, may fill the position at once by making a temporary appointment as prescribed herein.

3) Except as to appointments to positions in the headquarters of the several departments and other portions of the civil service at Ottawa, the appointments to any local positions in any province shall, so far as practicable, be made from *bona fide* residents of such locality. 1919 (2nd session), c. 10, s. 10.

22. The Commission, with the approval of the Governor in Council, may by regulation prescribe the several limits of age within which persons shall be eligible for appointment to positions in the civil service. 1918, c. 12, s. 41.

23. When it has been determined by the Governor in Council that any post office, the employees of which do not come under this Act, is to be brought hereunder, any person then employed in such office, who

a) has had at least two years' postal experience, one of which was in the office in question; and

b) was, at the commencement of his service, within the limits of age prescribed by the Commission; and

c) satisfies the Commission that he possesses the necessary qualifications;

shall be considered eligible for appointment to any position in such office without competitive examination.

PROBATION

24. The deputy head may, at any time before the expiration of six months, reject any person assigned or appointed to any position under his control or direction, or he may extend the period of probation within which such person may be rejected for another six months; and the cause of rejection, or the reason for extending the period of probation, shall be reported by the deputy head to the Commission.

2) Where a person is rejected, the Commission shall thereupon select another person to take the place of the one rejected.

3) The Commission shall, after investigation, decide whether the name of a rejected person shall be struck off the list as unfit for the service generally or whether he shall be allowed a trial in some other position for which he may be eligible. 1918, c. 12, s. 13.

25. After a person has served in a position for the probationary term of six or twelve months, as the case may be, he shall be deemed to be appointed to such position. 1918, c. 12, s. 14.

EXAMINATIONS

26. Competitive examinations shall be held by the Commission to establish lists of persons eligible for appointment.

2) Such examinations may be written or oral in the form of a demonstration of skill or any combination of these; they shall be of a character fairly to test and determine the relative fitness and ability of candidates actually to perform the duties of the class to which they seek to be appointed, and any investigation of training and experience and any test of technical knowledge, manual skill, or physical fitness that, in the judgment of the Commission, serves to this end may be employed.

3) Except as herein provided, the examinations shall be open to all persons who may be lawfully appointed to any position within the class for which the examination is held, with such limitations as may be specified in the regulations of the Commission as to age, sex, health, habits, residence, moral character and other qualifications that are in the judgment of the Commission requisite to the performance of the duties of such positions.

4) The Commission shall designate the classes of positions for which, having regard to the number and frequency of appointments, lists of persons eligible for appointment shall always be maintained; for other classes, examinations shall be held only when vacancies occur and no list of persons so eligible exists. 1919 (2nd session), c. 10, ss. 9 and 10.

27. The list of eligible persons for each class of positions in the civil service shall be made up first of names of persons who have previously held permanent positions in such class and who were laid off while in good standing under the provisions of this Act, and then of names of persons who have been examined by the Commission and found qualified. 1919 (2nd session), c. 10, s. 10.

28. Any person who formerly held a permanent position in the civil service but resigned and proceeded on active service overseas in the military or naval forces of His Majesty or of any of His Majesty's Allies during the war, may have his name placed on the list of eligible persons for the class of position from which he resigned, or for any other position for which he may have qualified, in the order, as respects other persons, provided by the regulations of the Commission, and his salary on appointment shall be the salary he was receiving at the time of his resignation, or the minimum salary of the class in which the position is classified, whichever be the higher. 1920, c. 41, s. 3.

29. Immediately after each examination a list of the successful competitors in the case of a competitive examination, and of successful candidates in order of merit in other examinations, shall be made out and published in the *Canada Gazette*.

2) The Commission shall prepare and maintain a special list of persons in receipt of pensions by reason of their services in the war who

a) have from causes attributable to such service lost capacity for physical exertion to an extent which makes them unfit efficiently to pursue the avocations which they were pursuing before the war;

b) have not been successfully re-established in some other avocation; and

c) desire to be placed on such list.

3) The Commission shall obtain as full particulars of each person on such special list, including particulars of his age, education, physical and mental condition, resources and responsibilities, as it is possible to obtain from all available records.

4) In all examinations for entrance into the civil service the persons named on such special list who are found to possess the necessary qualifications shall be named, in the order of merit, on the list of successful candidates above all other candidates; and all other persons who have been on active service overseas on the military forces or who have served on the high seas in a seagoing ship of war in the naval forces of His Majesty, or of any of the allies of His Majesty, during the war, who have left such service with an honourable record or who have been honourably discharged, or when any persons who have served as aforesaid have died owing to such service, the widows of such persons, and who, in either case, obtain sufficient marks to pass such examinations, shall, irrespective of the marks they have obtained, be named in the order of merit, on the list of successful candidates next after any candidates who are on the special list mentioned in subsection two of this section and above all other candidates. 1921, c. 22, s. 2.

30. The provisions of any statute or regulation prescribing the age limit and physical requirements with respect to any appointment in the civil service shall not apply to any person with the military or naval service mentioned in subsections two or four of the last preceding section, if the Commission certifies that he is of such an age and in such a satisfactory physical condition that he is then able to perform the duties of the office and will probably be able to continue to do so for a reasonable period after his appointment. 1921, c. 22, s. 2.

31. Special competitive examinations may be held by the Commission, in accordance with regulations in that behalf made by the Commission and approved by the Governor in Council, for ascertaining the qualifications of persons to be employed as temporary officers, clerks and employees for the compilation of any census or for the audit and payment of fees and expenses in connection with any general election. 1918, c. 12, s. 51.

32. Every examination under this Act shall be held in the English or French language, at the option of the candidate; and notice of every examination shall be published in the English and French languages in the *Canada Gazette*, and such notice shall state the number of positions that it is expected will be open for appointments, the positions that are then vacant, and in each case the qualifications required for such positions. 1918, c. 12, s. 40.

33. No person shall, without the authority of the Governor in Council, be admitted to any examination unless he is a natural born or naturalized British subject, and also has been a resident of Canada for at least three years.

2. Any person holding a permanent appointment in the civil service may enter for any open competition or examination if such person, when first appointed, was not older than the maximum age prescribed for the position for which the examination is being held and if successful thereat may be appointed irrespective of his age. 1918, c. 12, s. 41.

34. Whenever the Commission is satisfied that any irregularity or fraudulent practice has obtained at an examination held by it or by any person deputed by it, the Commission may summon before it by a summons (which may be in the form in Schedule C of this Act) signed by the chairman or by any one of the commissioners, and may examine under oath or affirmation any person who, in its opinion, is in a position to give evidence in relation to such irregularity or fraudulent practice. 1918, c. 12, s. 5.

35. If any person is proved upon any inquiry to have been concerned in any fraudulent practice, or to have been guilty of any breach of the regulations made by the Governor in Council with respect to any examination held under the authority of this Act, such person shall be liable, upon summary conviction, to a penalty not exceeding fifty dollars or to imprisonment for any term not exceeding one month; and if any such person's name is upon the list of persons who have been found qualified for any position the Commission may remove his name from such list. 1918, c. 12, s. 6.

36. Every person who, at any examination held under this Act, personates any candidate or employs, induces or allows any person to personate him or connives or assists at any personation, is guilty of an offence and liable, on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding two hundred dollars, and, if he is employed in the civil service, to be dismissed therefrom. 1918, c. 12, s. 7.

37. Every person who surreptitiously procures from any printer or other person, and every person who, without authority, furnishes to any other person any examination question paper or any other paper relating to any such examination as aforesaid, is guilty of an offense and liable, on summary conviction, to imprisonment, with or without hard labour, for a term not exceeding six months, or to a fine not exceeding two hundred dollars, and, if he is employed in the civil service, to be dismissed therefrom.

2. No such person shall be allowed to present himself at any subsequent examination. 1918, c. 12, s. 8.

TEMPORARY EMPLOYMENT

38. When, from a temporary pressure of work, extra assistance is required in any branch of the civil service, the Commission may, on the written report of the deputy head that such extra assistance is required, authorize the em-

ployment of such number of temporary employees as are required to carry on the work.

2) The Commission shall establish lists of persons eligible for such temporary employment.

3) Temporary employment in the civil service shall be authorized only for such time, not exceeding six months, as the Commission deems necessary, and the period for which the employment is authorized shall be mentioned in the certificate of qualification issued by the Commission; and one or more extensions of such period of employment may be granted by the Commission, but each such extension shall be limited to a period not exceeding six months. 1918, c. 12, s. 23; 1919 (2nd session), c. 10, s. 4.

39. When employees are required on short notice for emergency work outside the city of Ottawa, the responsible agent or officer of the department requiring such extra assistance may engage the necessary employees, and the said agent or officer in each case shall forthwith report to the Commission through the deputy head of his department the names of the persons so employed.

2) No such employment shall extend beyond thirty days unless approved by the Commission; but where the place of employment is outside the Dominion of Canada, the term of such employment may extend to ninety days.

3) Such employees may be paid the prevailing rate of pay at which persons qualified to perform such emergency work may be secured in the place or locality where the work is required to be done. 1919 (2nd session), c. 10, s. 4; 1920, c. 41, s. 2.

40. The Commission may authorize the temporary employment, without a competitive or other examination, of persons possessed of professional, scientific, technical or other expert knowledge, whose services are required for work of an exceptional character, and the salary or other remuneration to be paid to any person so employed shall be such as the Governor in Council may prescribe. 1919 (2nd session), c. 10, s. 4.

41. The successful competitors in any examination held by the Commission under the provisions of section thirty-one may be employed temporarily to perform the duties required of them, the census employees for any period not exceeding three years, and the election audit employees for any period not exceeding two years.

2) During such term of service such temporary officers, clerks and employees shall not be eligible for any employment other than the compilation of a census, or the audit and payment of election fees and expenses as the case may be, and they shall not be entitled by reason of such service to any further employment. 1918, c. 12, s. 51.

42. Temporary employees shall be paid only out of moneys specially voted by Parliament for the purpose. 1918, c. 12, s. 24.

OATHS

43. Every deputy head, officer, clerk and employee permanently employed in the civil service, before any salary is paid him, shall take and subscribe the oath of allegiance and also the oath contained in Schedule A to this Act, or such other oath as is provided by any other Act, in that behalf.

2) In the case of the Clerk of the Privy Council, and all officers, clerks and employees under him, and in the case of any officer, clerk or employee of whom the Governor in Council requires the same, there shall be added to the oath at the asterisks, in the form of the oath in the said Schedule A, the words contained in Schedule B to this Act.

3) The Clerk of the Privy Council shall take and subscribe the said oaths before the Governor General or some one appointed by him to administer the same.

4) In the case of persons residing or coming to reside at the city of Ottawa, the oaths shall be taken and subscribed before the Clerk of the Privy Council.

5) In other cases the oaths may be taken and subscribed before a justice of the peace or other proper authority, who shall forward the same to the Clerk of the Privy Council.

6) The Clerk of the Privy Council shall keep a register of all such oaths. 1918, c. 12, s. 31.

Part IV. General Conditions of Service

HOURS OF ATTENDANCE

44. The Commission shall by regulation prescribe working hours for each portion of the civil service, and there shall be kept and used in each branch of the civil service a book, system or device approved by the Commission for preserving a record of the attendance of the employees. 1919 (2nd session), c. 10, s. 6.

HOLIDAYS

45. The following days and none other shall be the holidays to be observed in and by the civil service:

1) Sundays;
2) New Year's Day;
3) Good Friday;
4) Easter Monday;
5) Victoria Day;
6) The birthday of the reigning Sovereign, or the day fixed by proclamation by the Governor in Council for the celebration thereof;
7) Dominion Day;
8) Labour Day;
9) Armistice Day;
10) Christmas Day;
11) Any day appointed by proclamation by the Governor in Council to

be observed as a general fast or thanksgiving or as a holiday. 1920, c. 41, s. 6; 1921, c. 16, s. 6.

LEAVE OF ABSENCE

46. The deputy head may grant to each officer, clerk or other employee a yearly leave of absence for a period not exceeding eighteen days in any one fiscal year, exclusive of Sundays and holidays, after they have been at least one year in the service.

2) Every such officer, clerk or employee shall take the leave so granted at such time each year as the deputy head determines. 1918, c. 12, s. 25.

47. The Commission, with the approval of the Governor in Council, shall make regulations under which the deputy head may in case of illness or for other sufficient reason grant leave of absence to any officer, clerk or employee for such period or periods, with or without pay, or with reduced pay, during such period or periods, or such part of the same, as the regulations may prescribe. 1918, c. 12, s. 26.

48. When any officer, clerk or employee is absent from duty without leave, his salary for each day of such absence shall be deducted from his monthly salary. 1918, c. 12, s. 27.

PROMOTIONS

49. Promotion is a change from one class to another class with a higher maximum compensation, and vacancies shall be filled, as far as is consistent with the best interests of the civil service, by promotion.

2) Promotions shall be made for merit by the Commission upon such examination, reports, tests, records, ratings or recommendations as the Commission may by regulation prescribe.

3) In making promotions, the Commission may, by regulation restrict the competition by merit to all employees or to employees of certain class or classes of a specified seniority, and may prescribe the marks or ratings to be obtained by such employees for efficiency and seniority, such marks or ratings not to exceed one half of the total marks required under any merit system or method adopted by the Commission for promotion purposes. 1919 (2nd session), c. 10, s. 10; 1921, c. 22, s. 3.

TRANSFERS

50. The Commission shall by regulation provide for the transfer of employees within any department or any portion of the civil service.

2) No employee shall be transferred from a position in one department or portion of the civil service to a position in another department or portion of the civil service except upon the request of the respective deputy heads. 1919 (2nd session), c. 10, s. 10.

SUSPENSION

51. The head of a department, and in his absence the deputy head, may

a) suspend from the performance of his duty any officer, clerk or employee guilty of misconduct or negligence in the performance of his duties;

b) remove such suspension;
but no person shall receive any salary or pay for the time or any part of the time during which he was under suspension unless the Commission is of opinion that such suspension was unjust or made in error or that the punishment inflicted was too severe.

2) All cases of suspension, with the reasons therefor, shall be reported in writing by the deputy head to the Commission. 1918, c. 12, s. 29.

DISMISSAL

52. Subject to the provisions of section three of this Act, nothing herein contained shall impair the power of the Governor in Council to remove or dismiss any deputy head, officer, clerk or employee, but no such deputy head, officer, clerk or employee, whose appointment is of a permanent nature, shall be removed from office except by authority of the Governor in Council. 1918, c. 12, s. 28.

RESIGNATION

53. The Commission shall by regulation prescribe what shall constitute a resignation of a position by an employee. 1919 (2nd session), c. 10, s. 5.

ABOLITION OF POSITION

54. An employee holding a permanent position that is to be abolished, or which is no longer required, shall be laid off and his salary discontinued but his name shall be placed, in the order provided by the regulations of the Commission, on the list of persons eligible for the class of positions from which he was laid off or for any other position for which he may have qualified. 1919 (2nd session), c. 10, s. 5.

POLITICAL PARTISANSHIP

55. No deputy head, officer, clerk or employee in the civil service shall be debarred from voting at any Dominion or provincial election if, under the laws governing the said election, he has the right to vote; but no such deputy head, officer, clerk or employee shall engage in partisan work in connection with any such election, or contribute, receive or in any way deal with any money for any party funds.

2) Any person violating any of the provisions of this section shall be dismissed from the civil service. 1918, c. 12, s. 32.

GRATUITY ON DEATH

56. If a person dies while in the civil service, after having been at least two years therein, an amount equal to two months of his salary shall be paid to his widow or to such person as the Treasury Board determines. 1918, c. 12, s. 30.

Part V. Exceptions and Special Cases

GOVERNMENT RAILWAYS AND SHIPS

57. The provisions of this Act shall not apply to positions in connection with the Government Railways or any railway owned or controlled by His

Majesty, or to any position on any ship of His Majesty, until Parliament otherwise enacts.

2) In this section the expression "ship of His Majesty" includes every description of vessel, however propelled, which is used in navigation or in the improvement of navigation, and which is the property of or chartered or employed by His Majesty, or the cost of which, or any portion of the cost of which has been defrayed out of the Consolidated Revenue Fund of Canada. 1920, c. 14, s. 7; 1921, c. 22, s. 1.

ROYAL AND OTHER COMMISSIONS AND DEPUTY HEADS

58. Nothing in this Act shall affect the powers of the Governor in Council with respect to the appointment of any commissioner or other member of any royal or other commission or board or any deputy head. 1921, c. 22, s. 1.

CASES OF IMPRACTICABILITY

59. In any case where the Commission decides that it is not practicable nor in the public interest to apply this Act to any position or positions, the Commission may, with the approval of the Governor in Council, exclude such position or positions in whole or in part from the operation of the Act, and make such regulations as are deemed advisable prescribing how such position or positions are to be dealt with.

2) The Commission shall make an annual report to Parliament within thirty days from the commencement of each session setting forth the positions excluded under this section in whole or in part from the operation of the Act and the reasons therefor together with the regulations prescribed and approved for dealing with such positions. 1921, c. 22, s. 1.

PRIVATE SECRETARIES

60. Any person may be appointed by a minister of the Crown or other member of the Government to be his private secretary.

2) If such person holds a permanent position in the civil service he may be paid an additional salary not exceeding six hundred dollars a year whilst so acting; but if he does not hold a permanent position in the civil service he may be paid such salary as the Governor in Council may prescribe.

3) No salary shall be payable to any private secretary unless the amount has been voted by Parliament. 1918, c. 12, s. 49.

OFFICERS, ETC., OF PARLIAMENT

61. The provisions of this Act relating to appointment, transfer, promotion, salaries, increases thereof, classification, political partisanship and payment of gratuity on death shall apply to the permanent officers, clerks, and employees of both Houses of Parliament and of the Library of Parliament, and wherever any action is authorized or directed to be taken by the Governor in Council or by orders in council, such action, with respect to the officers, clerks and employees of the Senate or the House of Commons, shall be taken by the Senate or the House of Commons, as the case may be, by resolution.

2) With respect to the officers, clerks and employees of the Library of Parliament, and to such other officers, clerks and employees as are under the joint control of both Houses of Parliament, such action shall be taken by both Houses of Parliament by resolution, or, if such action is required during the recess of Parliament, by the Governor in Council, subject to ratification by the Senate, House of Commons or both Houses, as the case may be, at the next ensuing session. 1918, c. 12, s. 34; 1919 (2nd session), c. 10, s. 7.

62. Nothing in this Act shall be held to curtail the privileges enjoyed by the officers, clerks and employees of the Senate, House of Commons or Library of Parliament with respect to rank and precedence, attendance, office hours, or leave of absence, or with respect to engaging in such employment during parliamentary recess as may entitle them to receive extra salary or remuneration. 1918, c. 12, s. 35.

Schedule A

I (*A.B.*) solemnly and sincerely swear that I will faithfully and honestly fulfil the duties which devolve upon me as * * * So help me God.

Schedule B

(*After the asterisks in schedule A.*)

And that I will not, without due authority in that behalf, disclose or make known any matter or thing which comes to my knowledge by reason of my employment as (*as the case may be*).

Schedule C

CIVIL SERVICE COMMISSION OF CANADA

To

You are hereby required to appear before the Civil Service Commission at on the day of at o'clock in the noon to testify the truth according to your knowledge in a certain enquiry pending before the Civil Service Commission respecting

(*The following words may be added if the production of any paper or document is required.*)

and that you bring with you and then and there produce the following documents:

Dated at this day of

A.D.

Civil Service Commissioner

DOCUMENT NO. 2

CIVIL SERVICE REGULATIONS

Prepared by the Civil Service Commission under authority of Section 4 (subsection 2) and Section 37 of the Civil Service Act, as amended, and approved by His Excellency the Governor General in Council.

. . . .

8. Except as otherwise specified in the Civil Service Act and in the present regulations, no person shall be admitted to any examination for clerical or lower grade positions unless he has attained the full age of eighteen years and is not over thirty-five years of age on the first day of the examination, except in cases where duly qualified candidates within these age limits are not available. In the case of examinations for positions of Office Boys, the age limits shall be sixteen and eighteen years. The age limit for examinations for other positions shall be as advertised for such examinations.

. . . .

13. Unless the requirements of the position demand otherwise, applicants of both sexes may be admitted to any examination.

. . . .

32. A successful competitor at any examination held under the direction of the Commission for employment in the Civil Service who declines to accept an appointment when it is offered him, shall forfeit all future right to such appointments, and his name shall be removed from the eligible list unless he offers, in the judgment of the Commission, good and sufficient reason for his action, or unless he has in advance waived appointment for a period and for reasons satisfactory to the Commission in which case his name may remain upon the eligible list in the order of merit.

. . . .

36. (1) Hereafter, no married woman, whose husband is living, shall be eligible for appointment in the Public Service.

(2) Provided that, when the Commission reports that the supply of experienced help for any particular kind of work is not sufficient to meet the demands of the Public Service, a married woman may be certified for temporary employment.

(3) Provided further, that where it can be established by a married woman that her husband is unable, through illness or other cause, to contribute to her support, such married woman may be certified for permanent or temporary employment.

(4) Provided further, that where, in the opinion of the Commission, it would be desirable or necessary, and in the best interests of the Public Service, to employ a married woman or to employ husband and wife together, such married woman may be certified to by the Commission for permanent or temporary employment.

. . . .

37. Assignments for temporary employment shall be made, whenever possible, from the list of persons eligible for permanent employment. When however, these lists are insufficient to meet the needs of the service for temporary assistance, the Commission may hold competitive examinations for temporary employment, or may select in order of merit persons who have filed applications for temporary employment with the Commission.

. . . .

41. All positions in the Civil Service where the nature of service is such that it is not continuous through the year, but recurs in each successive year, shall be designated as "Season Positions," and shall be subject to the provisions of the regulations applicable generally to positions to be filled by open competition, including preference to returned soldiers if such are qualified and available. Positions under the Board of Grain Commissioners may be considered seasonal where the nature of the service is such that it is not continuous over a period of years, but depends upon the conditions surrounding the movement of the grain each year.

42. Any person selected for appointment to a seasonal position as a result of success at an open competition therefor, shall be certified by the Civil Service Commission for seasonal employment and all those for whom seasonal certificates have been or shall be issued, shall be considered eligible for re-employment from year to year without further certification. Persons who have not been selected by open competition may be appointed temporarily to seasonal positions in the absence of suitable eligibles but shall receive only a certificate of temporary employment and shall not be considered eligible for re-employment in the succeeding year without the issue of a further certificate.

. . . .

47. The word "transfer" shall be held to mean a change from one position to another position in the same class, or a change from a position in one class to a position in another class with the same or a lower maximum compensation, and shall apply only to permanent employees.

48. (*a*) A transfer from one position to another position in the same class may be made from one Department to another Department after approval by the Commission.

(*b*) A transfer from one position to another position in the same class may be made within a Department by the Deputy Head of the Department without reference to the Commission provided no change in residence is involved, but a report of such transfers must be made immediately to the Commission.

49. A transfer between classes with the same maximum compensation which, in the judgment of the Commission, have approximately the same qualifications, may be made after approval by the Commission.

50. A transfer between classes with the same maximum compensation but which, in the judgment of the Commission, have not approximately the same qualifications may be made by the Commission only after it has satisfied itself of the fitness of the person recommended to be so transferred.

51. If a transfer made under Sections 48, 49 or 50 of these regulations is to a class which does not contain the same salary rate as that which the employee is receiving, the transfer must be made at the rate which the employee is receiving, and increase to the next higher rate of the new range may be made at the expiration of one year from the date of the employee's last increase.

52. A transfer to a class with a lower maximum compensation may be made after approval by the Commission.

53. Where an employee recommended for transfer under Section 52 of these regulations is receiving a salary greater than the maximum compensation of the class to which he is to be transferred, his salary, after transfer, shall be the maximum salary of his new class, or such rate within the range of said class as may be mutually satisfactory to the Commission, the Department, and the employee. Where such employee is receiving less than the maximum of the new class, his salary shall be determined as under Section 51.

54. A recommendation for transfer in which a change of residence is involved must be accompanied by a certificate from the Deputy Head of the Department in which the vacancy exists that the position in question cannot be filled efficiently by local promotion.

55. When a Private Secretary to a Minister of the Crown, who is a permanent employee of the Civil Service, vacates his position as Private Secretary, he may be considered eligible for transfer to any position in the public service for which, in the judgment of the Commission, his qualifications and previous experience qualify him, provided that the minimum salary of the new position shall not exceed the maximum salary, less allowance, of the class in which the transferee now is.

56. Requisitions for the filling of vacancies in permanent positions in the Service shall include a statement from the Deputy Head of the department as to whether or not, in his opinion, it is consistent with the best interests of the Service that the vacancy in question should be filled by promotion, and, if so, to what groups or classes the competition should be restricted.

57. Promotion examinations may be limited to such services or classes or to such organization units, departments, or parts of the Service as the Commission deems advisable.

58. Promotion examinations shall be given due publicity by the Commission in the units, branches or departments within which the competitions in question are to be held.

59. Promotion examinations may include practical, oral or written tests or be of such other nature as will, in the opinion of the Commission, best determine the relative qualifications of the candidates and their fitness for the position in question. The factors to be considered shall be seniority and efficiency in the Service, and fitness to perform the duties of the vacant position, but the marks given for efficiency and seniority shall not exceed one-half of the total marks that can be obtained at the examination.

60. Promotion examinations shall be open to permanent employees only.

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101. The resignation of any employee shall be submitted in writing to the Deputy Head of the Department accompanied by an application for such retiring leave as the employee may be entitled to receive. If the resignation is accepted the Deputy Head shall forward same to the Commission with a recommendation for the amount of retiring leave which he is disposed to allow, and upon the Commission's acknowledgment of same, the resignation shall be held to become effective at the expiration of the period of retiring leave approved.

102. An employee may, with the approval of the Deputy Head, withdraw his resignation at any time during the period of retiring leave, provided that he makes a refund of the salary which he has received while on such leave, but after the expiration of the full period of retiring leave, the employee can no longer be considered eligible for re-instatement.

103. Any employee absent from duty without leave for a period of two weeks shall be held to have abandoned his position which shall thereby become vacant, and if the Department desires, immediate steps may be taken to fill the same.

104. The written resignation of an employee shall be submitted to the Department at least two weeks in advance of the time when the employee desires to cease duty, otherwise the employee's claim to retiring leave may be considered as forfeited.

105. (1) All communications from the various departments of the Public Service to the Civil Service Commission, respecting appointments, classification, promotion, increase of salary, transfer or other change in status of employees, shall hereafter be made only by the Deputy Heads of the respective departments, or by such persons (not exceeding one in any department) as they may especially authorize, and shall be brought to the immediate attention of the Minister of the Department concerned.

(2) Except as provided in clause (1) of this regulation, no person shall directly or indirectly, solicit or endeavour to influence a member of the Commission, or any officer thereof with respect to the appointment of any person

to the service, or with respect to the promotion or transfer of, or an increase of salary to any officer, clerk or employee in the service.

(3) Any person who, directly or indirectly, solicits or endeavours to influence a member of the Commission or any officer thereof, in favour of his appointment, promotion, transfer or increase of salary, shall be deemed to be unworthy of such appointment, promotion or increase, and it shall not be accorded him, and if he is employed in the Civil Service, he shall be liable to immediate dismissal.

106. (1) Except in the case of vacancies created by death, resignation, or other causes which do not involve any addition to the staff, no application shall be made to the Civil Service Commission for the creating or filling of a new permanent position until approval of such addition to the staff has been obtained from the Governor in Council. When approval has been obtained, as above provided, application may then be made to the Civil Service Commission for the classification and filling of the position.

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113. Any female employee in the Public Service shall, upon the occasion of her marriage, be required to resign her position.

114. Any Deputy Head, officer, clerk or employee who is dismissed from the Civil Service by order of the Governor General in Council on the ground of political partisanship in accordance with the provisions of section 32 of the Civil Service Act, 1918, as amended, shall not be eligible to compete for the same or any other position in the Public Service for the period of one year from the date of dismissal.

THE CIVIL SERVICE OF THE COMMONWEALTH OF AUSTRALIA AND OF NEW SOUTH WALES

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INTRODUCTION

PUBLIC SERVICE MANAGEMENT

A distinctive Australian contribution to public service organization is the creation of independent commissions charged with the recruitment, promotion, discipline, and organization of personnel, and with the efficient and economical organization and management of the various government departments. The position in Australia may best be contrasted with that of England. There, a section of the Treasury is charged with the duty of co-ordinating the work and organization of the departments, and the civil service commissioners are confined to the task of recruiting the service. In Australia, these functions are united in one body. The system is best illustrated by the practice in the Australian federal government, and that of the state of New South Wales.

The methods adopted in England in 1855 and in 1870 were not without their influence upon Australian experiments, but the present system did not find its full expression until the passing of the New South Wales Public Service Act, 1895.

The first comprehensive attempt at public service reform was made by Victoria in 1862, as a result of a royal commission presided over by Professor Hearn. The preamble to Act No. 160, of 1862, set out the principal objects of the measure as being

> to classify the civil service according to the duties performed by the officers thereof, and to regulate the salaries therein accordingly, and to establish a just and uniform system of appointment, promotion and dismissal, and to grant to such officers furlough for recreation and other purposes, and provide retiring allowances for them in certain cases.

The act failed, because no provision was made for a single authority to administer it (each department being left to apply the provisions to its own circumstances), and because Sec. 23, which was designed to enable the government from time to time to secure for higher positions men of known ability and qualifications, was given a general application and used to cover widespread political patronage for the appointment of any suppliant to a position as a person of "known ability." The examination provisions were thus avoided, and the service, twenty years later, contained 1,703 persons appointed under the act, and 15,843 who had gained appointment under Sec. 23. Further legislation in Victoria, Act No. 773 of 1883 attempted to remedy these conditions. It declared that,

> whereas a large number of persons are employed in the service of the State who are not subject to nor included within the provisions of the Act 160 . . . . and whereas it is desirable to repeal that Act and to make better and general provisions which shall apply to and include all Departments of the Public Service not heretofore provided for by any Act of Parliament: and whereas it is expedient and highly desirable to abolish all patronage with respect to appointments and promotions in the Public Service, and to establish a just and equitable system in lieu thereof which will enable all persons who have qualified themselves in that behalf to enter the Public Service without favour or recommendation other than that of their own merits and fitness for the position: Be it therefore enacted . . . .

This act remedied the defect of the Act of 1862 by appointing three public service commissioners for a period of seven years with the right of renewal. Owing to financial stress, these commissioners were retired in 1892, and their duties devolved upon the audit commissioners. This proved unsatisfactory, for the two sets of functions could not be properly discharged by the one authority, and, in 1901, provision was made for a single commissioner to discharge the duties imposed by the Public Service Act.

The Victorian Act of 1883 paved the way for the passing of the New South Wales Civil Service Act of 1884, which provided for the appointment of a civil service board, but its powers were much narrower than those of the Victorian board. It effected no improvement in public service methods and organization. A Royal Commission, appointed in 1895, considered that the only satisfactory method of dealing with the public service lay in constituting a body entirely independent of political parties and making it entirely responsible for management and recruitment.

The Act of 1895 gave effect to that recommendation, and constituted a public service board of three members. A consolidated measure was re-enacted in 1902, and the principle of independent management still subsists. The powers of the board have been abridged by the admission of public servants to the Industrial Arbitration Court, as well as by the creation of a number of *ad hoc* commissions,[1] whose staff and organization are not subject to the provisions of the Public Service Act, 1902.

When the commonwealth was established in 1901, the government modeled its public service legislation on that of New South Wales. The Commonwealth Public Service Act, 1902, appointed a single commissioner with powers similar to those possessed by the New South Wales board. In 1922, as a result of the reports of two commissions of inquiry, the public service machinery was overhauled, and a public service board of three members was appointed, with enhanced powers. Practically all the federal departments were brought under the jurisdiction of the public service board, but in 1926 the government departed from the principle of unified control and constituted two important commissions whose arrangements and staff were not subject to the provisions of the Public Service Act. Federal public servants are under the jurisdiction of a special public service arbitrator.

In all the states of the commonwealth the principle has been adopted of independent recruitment and control of the service by commissions, although their powers and duties are generally narrower than those conferred by the federal and New South Wales acts.

Public service commissions are always empowered to frame regulations to give effect to the policy prescribed by the Public Service Act. These regulations are usually very voluminous, for they specify in detail the obligations and privileges of officers. Where legislative amendments are difficult to secure because of the congestion of parliamentary business, departmental rules and regulations may be varied immediately the necessity arises, which provides the needed elasticity for management.

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[1] The principal *ad hoc* commissions are the New South Wales Railway Commissioners, the Harbour Trust Commissioners, the Government Savings Bank Commissioners, the Metropolitan Water, Sewerage and Drainage Board, and the Water Conservation and Irrigation Commission. All these have complete control of their own organization, and have their own special department for personnel recruitment. The Water Board and the Water Conservation Commission use the machinery of the Public Service Board for recruitment. The latter commission also uses the machinery of the Public Service Board for conducting grade tests for promotion. The other commissions mentioned have no machinery for co-operating with the Public Service Board.

RECRUITING THE PUBLIC SERVICE

For the great bulk of public service appointments in Australia the principle of open competitive examinations is adopted. The competition may be either a written or a viva voce examination, coupled with the scrutiny of testimonials. The viva voce competition is usually adopted for the appointment of persons to professional and technical positions. For some professional positions, cadets are submitted to a written examination, and are then trained in the departments in their professional duties. For others, this method is not suitable, and the practice is to advertise for persons with proved professional qualifications. For the highest positions, e.g., the personnel of commissions, or for a few appointments usually held to be in the gift of the crown, the appointments are made by the government of the day. The pressure of public opinion alone can determine that these appointments shall be on the basis of merit.

For the clerical division, from which the chief administrative officials are usually chosen, the method of recruitment is invariably by competitive written examinations. The Australian services have only partly adopted the fundamental principle of the Macaulay system—that of recruitment according to the functions to be performed. The Victorian Act of 1882 prescribed two examinations for recruitment: an elementary examination for the lower division and an advanced examination for the higher division. That principle was abandoned in 1890, when the second examination was abolished as a political concession to an agitation worked up by lower-division officers. In New South Wales, the Act of 1895 provided for recruitment from below, but contained a section which precluded the promotion of an officer to an administrative position unless he had passed an examination to prove his fitness for that position. This method is not generally adopted in the other states, although it should be regarded as fundamental to efficiency and economy.

Until recent years another defect in our methods of recruitment was that the public service examinations corresponded to no definite terminal points in the ordinary educational courses. This necessitated special preparation for public service examinations, and was attended by all the disadvantages which the Macdonnell Commission emphasized in England in 1914. Generally speaking, the principal public service clerical examinations now correspond with the regular school examinations, and the results of the latter are used by the former, subject to certain minor formalities being complied with.

PROMOTION EXAMINATIONS

In order to avoid the defects of inbreeding associated with recruitment of juniors, the principle of promotion tests has been adopted in the various services of the commonwealth. The passing of these tests is a condition of promotion. The objects of the tests are to insure that junior officers will not abandon habits of study on appointment to the public service, but that, during their formative years, they may acquire habits of industry and capacity for observation. The subjects in each case are designed to disclose, not merely the officer's mastery of duties which he is expected to discharge in his present position, but his capacity to discharge progressively more important duties. In the New South Wales service, the most important of these promotion tests is that prescribed under Sec. 50, which precludes the promotion of an officer to a position entailing administrative functions unless he has proved, by a written examination, that he possesses a working knowledge of the literature dealing with the theory and practice of the duties upon which he is likely to be engaged. This promotion test seeks to achieve what the English system sets out objectively to secure by its system of special initial recruitment for the administrative division.

THE CIVIL SERVICE AND POLITICS

The development of associations of civil servants has given prominence to the political rights of civil servants. There are two aspects of this problem: the activities of individuals and those of groups. Considerable latitude is allowed to individuals to engage in political activities, but only in New South Wales and Western Australia is it possible for an officer to contest an election without resigning his official position. If elected, he must resign; if unsuccessful, he may resume his official duties. In the federal government and the other states an official must resign when he nominates for election.

The attitude of groups of officials differs according to whether they are clerical and professional officers or engaged in manipulative occupations. In the latter case, their associations are usually affiliated with the Labour party. The other organizations officially declare an aloofness from all political parties, although they are prepared to use their strength to bargain with the different political parties for concessions. There is nothing in Australia corresponding to the regulations promulgated under the British Trade Disputes and Trade Unions Act, 1927, although Sec. 66 of the Commonwealth Public Service Act, 1922, deals with the position of federal officers in relation to strikes.

DOCUMENTS

1. *Australia.*—By the Commonwealth Constitution Act and the Commonwealth Electoral Acts, public servants who wish to stand for election to the federal Parliament must resign before date of nomination, and in the case of state elections before the date of election. Officials may contest municipal elections subject to obtaining permission to do so. Active participation in politics is permitted subject to the provisions of Regulation 46 of the Public Service Act, which requires an officer (*a*) not to comment publicly upon the administration of any department of the commonwealth, and (*b*) not to use for any purpose other than the discharge of his official duties, information gained or conveyed to him through his connection with the public service.

Sec. 66 of the Commonwealth Public Service Act, 1922, provides that

> any officer or officers of the Commonwealth service directly fomenting or taking part in any strike which interferes with or prevents the carrying on of any part of the Public Services or utilities of the Commonwealth shall be deemed to have committed an illegal action against the peace and good order of the Commonwealth, and any such officer or officers adjudged by the Board, after investigation and hearing, to be guilty of such action, shall therefor be summarily dismissed by the Board from the Service, without regard to the procedure prescribed in this Act for dealing with offences under the Act.

2. *New South Wales.*—Under the Constitution (Public Service) Amendment Act, 1916, officials are given leave of absence to contest parliamentary elections without pay, and they are eligible for reinstatement if unsuccessful. With regard to municipal politics Regulation 20 of the Public Service Act, provides that

> no officer shall accept or hold the office of treasurer, clerk or auditor of a shire or municipality. An officer may accept and hold the office of President of a shire or mayor of a municipality, but shall resign such office if, in the opinion of the Minister administering the department in which he is employed, the holding of such office is incompatible with the proper discharge of his departmental duties.

Regulation 21 provides that an officer shall not (*a*) publicly comment upon the administration of any department of the state or (*b*) use for any purpose other than the discharge of his official duties information gained by, or conveyed to him through, his connection with the public service.

Victoria, South Australia, and Tasmania follow the policy of the commonwealth. Western Australia follows New South Wales.

SALARY FIXING

Public service boards and arbitration courts.—The grading and classification of officers and the determination of their rates of remuneration and conditions are at once onerous and contentious. The problems associated with these questions in Australia may best be illustrated from the experience of the New South Wales public service and that of the commonwealth.

By the New South Wales Public Service Act, 1895 (consolidated in 1902), it was provided that the public service board should, at intervals of not more than five years, grade officers, classify their work, and determine the salary, fee, or allowance fairly appropriate to the work performed by each officer or each grade of officers. "Subject to the necessary provision (of funds) by Parliament," such salary, fee, or allowance should be the amount payable in respect of such work.

This principle subsisted without variation in New South Wales for fifteen years, but, during that period, dissatisfaction was manifested at the delay caused by the quinquennial regrading and because appeals against decisions lay only to the board which had made the initial determination. The Amending Public Service Act, 1910, removed both these objections. Regrading became practically continuous, and the duties of the public service board in regard to grades, salaries, fees, and allowances became a function of departmental boards. Each departmental board comprised a member of the public service board, who acted as chairman, the head of the department, and the head of the branch in which the officer whose case was being considered was employed. Appeal lay from the decision of the departmental board to the other two members of the public service board, and still further recourse might be had to those two members associated with a district court judge.

The departmental board system was condemned by the Allard Royal Commission (1919) as tending, by its methods and the appeal provisions, to undermine both economical administration and effective discipline. Instead of reverting to the *status quo ante*, the New South Wales government passed two measures in 1919. The first was the Public Service (Amendment) Act, 1919, and the second, the Industrial Arbitration (Amendment) Act, 1919. The former provided a new authority for salary-fixing, called salaries committees, and was a radical departure from the principles of the Public Service Act, 1895. The latter, i.e., the Industrial Arbitration (Amendment) Act, 1919, provided that public servants whose remuneration was £525, or less, might have access to the Arbitration court, presided over by a judge. The arbitration court was empowered to make awards (*a*) fixing the lowest prices for work done, and the lowest rates of wages payable, the lowest rates for overtime and holidays and other special work, and (*b*) declaring what deductions might be made for board and/or residence. It is important to notice that, while the arbitration court became the real authority in respect of the matters over which it had jurisdiction, it nevertheless had only a limited jurisdiction in respect of public servants working under the Public Service Act, 1895 (1902). In other callings the power of the court extends generally to "industrial matters." This term is very embracing, comprising "matters or things affecting or relating to work done or to be done, or the privileges, rights, or duties of employees or employers in the industry." The court therefore could not determine grades or classifications, nor could it abrogate the examination requirements of the public service board for promotion. In other words, the public service board still retained its jurisdiction over its officers, save in respect of fixing of salaries up to £525 per annum, and overtime.

The salaries committees mentioned, however, were authorized by the New South Wales legislation to fix the grade, salaries, fees, and allowances of officers up to £525. To the board was reserved the right to vary any determination of a salaries committee, and, if necessary, appeal lay to the board. The salaries committees were appointed by the board and comprised, usually, one of the board's inspectors as chairman and two other responsible officers, chosen from the various departments affected because of their expert knowledge. The salaries committees were handicapped by reason of the preference of public servants for the arbitration court, which could make an award without the hampering restriction "subject to the provision of funds by Parliament," and by reason of the fact that the departmental officers who acted on the committees were not detached from their ordinary duties and could ill afford the time which the work of grading and salary-fixing demanded. In theory, the salaries committees dealt with individuals and the court with groups. In practice, however, the salaries committees did most useful work, and the scheme which they devised to determine the salaries of the teaching and allied groups of officers has remained a monument of their effectiveness.

A change in government produced the Industrial Arbitration (Amendment) Act, 1922, which removed those public servants who were under the provisions of the New South Wales Public Service Act, 1895 (1902) from the jurisdiction of the arbitration court, as from July, 1923. Concurrently, the Public Service Act was amended to reconstruct the salaries committees to make them more acceptable to the public servants. The jurisdiction of the committees remained unaltered, but the personnel was changed to comprise an employees' representative (chosen from a panel of employees, so that the representative would vary with each class, and be most familiar with the classes of officers being dealt with); a departmental representative; and an officer selected by the board as chairman (usually one of the board's inspectors).

The first division of committees was into groups representing the three main sections of the public service: the professional, the clerical, and the general. These "class" groups were treated on a "departmental" basis, so that three separate salaries committees consisting of a board's inspector, a departmental representative, and an employees' representative operated in each department of the public service.

Each officer was required to submit, in writing, all particulars considered relevant to the determination of his salary. He was given the opportunity, also, of appearing personally before the committee.

The function of the committee was, as under the 1919 act, the determination of salary; the express jurisdiction being in these words: "The grade and salaries of officers and the salaries of all other persons employed under the provisions of this Act shall be determined, in the first instance, by Salaries Committees."

The limit of jurisdiction was the salary of £525 per annum. The rights reserved to the public service board were: (*a*) the assessment of salaries over £525 per annum; (*b*) to review the salaries committees' determinations and to concur therewith or return them to the committee for further consideration; (*c*) on again receiving the determination either to concur or refer the case to an appeal tribunal consisting of a district court judge and two members of the public service board; and (*d*) to inform each officer of the final decision.

An officer whose salary had been concurred in by the board had alternative rights of appeal: (1) to the public service board; (2) to the tribunal before-mentioned.

This machinery for salary determination was to operate once every two years as from the beginning of the financial period. If, however, an officer were, in the biennial period, allotted substantially different duties, the right existed to move the salaries committee for a further determination of salary.

This scheme applied generally in respect of salaries up to £525 per annum, unless an association or organization representing a class of public servants came to an agreement with the board as to the salaries for the class. To the extent of such an "agreement," the powers of the salaries committees were suspended.

General determination of salaries committees took effect as from July 1, 1923, and July 1, 1925.

Before the expiration of the biennial period on June 30, 1927, the legislature, following a return to power of a labor administration, decreed the return of public servants to arbitration with limitations similar to those imposed in 1919, viz., the determination of salaries and overtime, but not the control over industrial matters generally. There was, however, an extension of the salary compass from £525 to £750 per annum.

The law relating to salaries committees was not repealed, however, and the earlier experience has been repeated—the assessment of salaries has been left to arbitration, and salaries committees have rarely functioned.

Service arbitration has followed two lines. The first and principal is the conciliation method. Claims for higher salaries for classes or groups of officers have been made the subject of negotiation between the public service board and the associations representing the classes or groups. It has been in rare instances only that agreements have not been arrived at fixing the salaries of the officers comprised in the classes. When ratified, such agreements are taken to the statutory body under the Arbitration Act—the conciliation committee—and made consent awards in arbitration.

In the cases in which the parties have not been able to agree, the second form of treatment, viz., arbitration, has been pursued. The claims are heard before the conciliation committee, which consists of an independent chairman and an equal number of employers' and employees' representatives. In practice, after the evidence is tendered, a further attempt is made at agreement in the light of the evidence and without calling on the chairman to vote. Occasionally, the chairman is called upon to decide. The decision arrived at becomes the award of the committee. Provision exists for appeal from the committee's decision to an industrial commission—three judges. This recourse has been used in only two or three cases to date.

A view of the results of the reintroduction of industrial arbitration to the public service suggests that two outstanding principles are observed. In the first chapter of service arbitration, and after a lengthy investigation of the circumstances of the "industry," Judge Curlewis propounded a method of treatment, which has constituted the "leading case," not only for the public service under the board's jurisdiction, but for public services generally, and for banking corporations, insurance offices, and similar organizations. The doctrine enunciated is referred to as the "career industry" scale. The fundamentals of this scale are that, even with routine officers, there should be paid the adult living wage—£4/5 per week—at the age of twenty-one. The judge further held that, at or about the marriageable age of twenty-six, such an official should be receiving about £6 per week; that, regard being had to the educational standard of the officers, their training, and the responsibility cast on them, further increasing amounts should be paid until a maximum of approximately £8 per week was reached. Under the current award for clerks this maximum is reached in the seventeenth year of service, which usually commences at about the age of seventeen years.

The second principle adhered to by the arbitration tribunals and applied to sections of officers doing similar work to employees outside the public service is a statutory creation. The aim and extent of this principle may best be stated by quoting from the words of the law on the subject, Sec. 26, Industrial Arbitration Act, 1912:

> The Court shall not award any conditions nor fix rates of wages for employees of the Crown less favourable than the conditions granted or the wages paid to other employees, not employed by the Government or its departments, doing substantially the same class of work. The fact that employment is permanent or that additional privileges are allowed in the service of the Government or its departments shall not of itself be regarded as a substantial difference in the nature of the work.

The commonwealth public service.—Under the Arbitration (Public Service) Act (1911), public servants were permitted to form associations and register under the commonwealth court of conciliation and arbitration. When registered they might submit claims which were dealt with as if they were industrial disputes within the meaning of the Conciliation and Arbitration Act. The court had complete jurisdiction over conditions of employment and rates of pay, in contradistinction to the limited jurisdiction of the New South Wales court.

Following upon a report of a royal commission in 1919 the commonwealth government repealed the Act of 1911 and enacted a new public service arbitration act which came into force in 1920, and created a special public service arbitrator with a tenure of office of seven years, subject to reappointment. Public service cases were thereupon removed from the jurisdiction of the ordinary arbitration court. The arbitrator has power to determine all matters submitted to him relating to salaries, wages, rates of pay, or terms and conditions of employment of public servants.

The following documents illustrate the position of the public service in the Australian commonwealth and in New South Wales.

1. Commonwealth Public Service Act, 1922.
2. Commonwealth Arbitration (Public Service) Act, 1920.
3. The New South Wales Public Service Act, 1922.

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DOCUMENT NO. 1

COMMONWEALTH PUBLIC SERVICE ACT, 1922

No. 21 of 1922

An Act to consolidate and amend the Law regulating the Public Service, and for other purposes.

[Assented to 18th October, 1922.]

Be it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:

Part I. Preliminary

1. This Act may be cited as the *Commonwealth Public Service Act* 1922.

2. This Act shall commence on a date to be fixed by proclamation.

3. This Act is divided into Parts, as follows:

Part I. Preliminary.
Part II. Composition and Administration of the Public Service.
Part III. The Commonwealth Service.
    Division 1. Divisions.
    Division 2. Classification.
    Division 3. Salaries of Officers.
    Division 4. Entrance examinations and appointments.
    Division 5. Promotions and transfers.
    Division 6. Offences.
    Division 7. Incapacity of Officers.
    Division 8. Leave of absence and holidays.
    Division 9. Reciprocal services of Commonwealth and State Officers.
    Division 10. Temporary employment.
    Division 11. Returned Soldiers.
    Division 12. Retirement of Officers.
    Division 13. Miscellaneous.
Part IV. The Provisional Service.
    Division 1. Application of Act to Provisional Service.
    Division 2. Classification and Salaries.
    Division 3. Appointments.
    Division 4. Miscellaneous.

. . . .

7. In this Act, unless the contrary intention appears—

"Chief Officer" means the chief officer, in a State or part of the Commonwealth, of the Department in connexion with which, or wherein is employed, any officer in connexion with whom, the term is used or is applicable;

"Classification" means the arrangement of officers and positions in classes, and includes the allotment to officers and positions of salaries or limits of salary according to the value of the work;

"Department" means any Department of the Public Service specified in the Second Schedule to this Act, and any Department at any time established by the Governor-General;

"Division" means a division of the Public Service;

"Officer" means any person employed in any capacity in the Public Service, whether appointed or transferred thereto before or after the commencement of this Act, but does not include a person temporarily employed;

"Returned Soldier" means any person who enlisted, prior to the eleventh day of November, One thousand nine hundred and eighteen and served in the war with satisfactory record in any Expeditionary Force raised under the provisions of the *Defence Act* 1903–1918, and includes—

a) a member of the Army Medical Corps Nursing Service who was accepted or appointed by the Director-General of Medical Services for service outside Australia during the war;

b) any member of the Naval Forces of the Commonwealth who has during the war been on active service outside Australia or on a ship of war;

c) any person who, during the war, has been employed as a radio telegraphist in the transport service in connexion with any such Expeditionary Force, and who, while so employed, served in the zone of war; and

d) any person who was born in Australia, or resident in Australia within six months prior to enlistment, and who, at any time during the war, served with satisfactory record in a Naval or Military Expeditionary Force raised in the United Kingdom or in any British Dominion;

"The Arbitrator" means the Arbitrator appointed pursuant to the *Arbitration* (*Public Service*) *Act* 1920;

"The Board" means the Board of Commissioners appointed in pursuance of this Act;

"Appeal Board" means an appeal board appointed under this Act;

"The Minister" means the responsible Minister of the Crown for the time being administering the Department in which is employed or proposed to be employed the officer or person in connexion with whom the term is used or is applicable;

"The Permanent Head" means the permanent head of the Department in connexion with which, or in which is employed any officer in connexion with whom, the term is used or is applicable;

"The Public Service" means the Public Service of the Commonwealth, as defined in section ten of this Act;

"The Territorial Service" means the Public Service of any Territory under the authority of the Commonwealth, including a Territory governed by the Commonwealth under a mandate;

"The War" means the war which commenced on the fourth day of August, One thousand nine hundred and fourteen.

8. Unless otherwise expressly provided, this Act shall not apply to any Justice of the High Court of Australia; the High Commissioner; the Auditor-General; the Public Service Arbitrator; the Director of the Commonwealth Institute of Science and Industry; the Commonwealth Railways Commissioner or any employee under the *Commonwealth Railways Act* 1917; the Commissioner of Taxation; the Assistant Commissioner of Taxation; any person employed in an honorary capacity; any officer the right to appoint whom is not vested in the Governor-General or the Board; any person remunerated by fees, allowances, or commission only; any person employed in the Naval or Military Forces only; any officers appointed or employed under the *Australian Soldier's Repatriation Act* 1920 or under the *War Service Homes Act* 1918–1920; or any officer or class of officers, or employee or class of employees, to whom or to which on the recommendation of the Board, the Governor-General declares that the provisions of this Act shall not apply:

Provided that the Board may from time to time as prescribed determine the rates of payment and conditions of employment of any such officer or class of officers, or employee or class of employees.

9. (1) Notwithstanding anything contained in this Act—

a) all appointments or promotions of officers of the Senate shall be made by the Governor-General on the recommendation of the President of the Senate;

b) all appointments or promotions of officers of the House of Representatives shall be made by the Governor-General on the recommendation of the Speaker;

c) all appointments or promotions of officers of both Houses of Parliament shall be made by the Governor-General on the joint recommendation of the President and the Speaker; and

d) the President or the Speaker or the President and the Speaker, as the case may be, may from time to time fix the periods of recreation leave which may be granted to officers of the Parliament.

. . . .

(6) The Governor-General may, on the recommendation of the President or the Speaker or the President and the Speaker (as the case may be), make, in relation to officers of the Parliament, regulations prescribing all matters in relation to which the Board is, by this Act, authorized to make regulations.

(7) Any regulation made under this Act by the Board shall apply to officers of the Parliament unless and until—

a) a regulation is made under the last preceding sub-section inconsistent with, or prescribing matters dealt with in, that first-mentioned regulation; or *b*) the Governor-General, upon the recommendation of the President or the Speaker or the President and the Speaker (as the case may be), by order declares that such regulation shall not apply to officers of the Parliament.

PART II. COMPOSITION AND ADMINISTRATION OF THE PUBLIC SERVICE

10. (1) For the purposes of this Act the Public Service shall comprise—

a) The Commonwealth Service; and

b) The Provisional Service.

(2) The Commonwealth Service shall include the Departments specified in the Second Schedule to this Act, and any Department of the Commonwealth Service at any time proclaimed by the Governor-General.

(3) The Provisional Service shall include any Department or branch of the Public Service of a provisional or temporary character which is included by proclamation.

11. (1) For the purposes of this Act the Governor-General may appoint a Board of Commissioners of three persons, and on the happening of any vacancy in the office of member of the Board the Governor-General shall appoint a person to the vacant office.

(2) In the making of appointments under the provisions of this section, preference shall be given, other things being equal, to returned soldiers.

(3) Of the three persons first appointed as members of the Board, one person shall be appointed for a term of five years, one for a term of four years, and one for a term of three years.

(4) Thereafter each appointment of a member of the Board shall be for a term not exceeding five years.

(5) Every person who is appointed a member of the Board shall, on the expiration of his term of office, be eligible for re-appointment.

(6) If any officer of the Commonwealth is appointed a member of the Board, his service as member shall, for the purpose of determining all his existing and accruing rights, be counted as Public Service in the Commonwealth.

(7) If any officer in the Public Service of a State is appointed a member of the Board, he shall have the same rights as if he had been an officer of a Department transferred to the Commonwealth and were retained in the service of the Commonwealth.

(8) In case of the illness, suspension or absence of any member of the Board, the Governor-General may appoint a person to act as the deputy of the member during his illness, suspension or absence, and the deputy shall, whilst so acting, have all the powers and perform all the duties of a member.

(9) No action or suit shall be brought or maintained against any person who is or has been a member of the Board, for any nonfeasance or misfeasance in connexion with his duties, nor shall any action or suit lie, nor any costs be payable, in respect of any proceeding before the Board or a member thereof.

12. (1) The Governor-General shall appoint one of the three members to be the Chairman of the Board, and on the happening of any vacancy in the office of Chairman the Governor-General shall appoint a person to fill that office.

(2) In the case of the illness, suspension or absence of the Chairman, the Governor-General shall appoint one of the other members to act as Chairman during such illness, suspension or absence.

13. (1) The Chairman of the Board shall receive a salary of Two thousand five hundred pounds a year and each of the other members shall receive a salary of Two thousand pounds a year, and the Consolidated Revenue Fund is to the necessary extent hereby appropriated accordingly.

(2) There shall be paid to each member of the Board, on account of his expenses in travelling to discharge the duties of his office, such sums as are considered reasonable by the Governor-General.

14. (1) The Governor-General may remove any member of the Board from office on an address praying for his removal being presented to the Governor-General by the Senate and the House of Representatives respectively in the same Session of the Parliament.

(2) The Governor-General may suspend any member of the Board from office for his behaviour or incapacity.

(3) A statement of the cause of the suspension shall be laid before both Houses of the Parliament within seven days after the suspension, if the Parliament is then sitting, or, if the Parliament is not then sitting, then within seven days after the next meeting of the Parliament, and if within sixty days thereafter an address is presented to the Governor-General by the Senate and the House of Representatives praying for the restoration of the member to office, the member shall be restored accordingly, but if no such address is so presented the Governor-General may declare the office of the member to be vacant and the office shall thereupon become and be vacant.

15. (1) A member of the Board shall be deemed to have vacated his office if—

a) he engages, during his term of office, in any paid employment outside the duties of his office;

b) he becomes bankrupt or insolvent, or applies to take the benefit of any Act or State Act for the relief of bankrupt or insolvent debtors, or compounds with his creditors, or makes an assignment of his salary for their benefit;

c) except on leave granted by the Governor-General, he absents himself from duty for fourteen consecutive days or for twenty-eight days in any twelve months;

d) he becomes permanently incapable of performing his duties.

(2) If a member of the Board becomes in any way concerned or interested in any contract or agreement made by or on behalf of the Commonwealth, or in any way participates or claims to be entitled to participate in the profit thereof, or in any benefit or emolument arising therefrom, otherwise than as

a member and in common with the other members of an incorporated company consisting of more than twenty-five persons, he shall be guilty of an indictable offence.

Penalty: Five hundred pounds or imprisonment for three years or both.

16. (1) The Board may, by writing under the hand of each member of the Board, delegate to any member of the Board or to any officer any of the powers of the Board under this Act (except this power of delegation) so that the delegated powers may be exercised by the delegate with respect to the matters or class of matters specified, or the State, part of the Commonwealth, or Territory defined, in the instrument of delegation.

(2) Every such delegation shall be revocable in writing at will, and no delegation shall prevent the exercise of any power by the Board.

(3) If in pursuance of any delegation given to him any delegate of the Board makes any recommendation with regard to any Department, the permanent head or a chief officer may request that the recommendation be referred to the full Board, and in that event the recommendation of the delegate shall not be deemed to be a recommendation of the Board unless it is indorsed by the full Board.

17. (1) In addition to such duties as are elsewhere in this Act imposed on it, the Board shall have the following duties:

a) to devise means for effecting economies and promoting efficiency in the management and working of Departments by—
  i) improved organization and procedure;
  ii) closer supervision;
  iii) the simplification of the work of each Department, and the abolition of unnecessary work;
  iv) the co-ordination of the work of the various Departments;
  v) the limitation of the staffs of the various Departments to actual requirements, and the utilization of those staffs to the best advantage;
  vi) the improvement of the training of officers;
  vii) the avoidance of unnecessary expenditure;
  viii) the advising upon systems and methods adopted in regard to contracts and for obtaining supplies, and upon contracts referred to the Board by a Minister; and
  ix) the establishment of systems of check in order to ascertain whether the return for expenditure is adequate;

b) to examine the business of each Department and ascertain whether any inefficiency or lack of economy exists;

c) to exercise a critical oversight of the activities, and the methods of conducting the business, of each Department;

d) to maintain a comprehensive and continuous system of measuring and checking the economical and efficient working of each Department, and to institute standard practice and uniform instructions for carrying out recurring work; and *e*) such other duties in relation to the Public Service as are prescribed.

(2) In relation to all matters specified in the last preceding subsection, other than paragraph (*e*) thereof, the Board shall in the first place advise the permanent head of the Department of its suggestions or proposals.

(3) If the permanent head does not concur in or adopt the suggestions or proposals he shall within a reasonable time inform the Board of the reasons therefor.

(4) Thereupon the Board may, if it thinks fit, make a recommendation, report or suggestion to the Minister administering the Department, and if the recommendation, report or suggestion is not approved or adopted by the Minister within a reasonable time, the Board may report the matter to both Houses of the Parliament either in a special report or in its annual report.

18. (1) The Board shall furnish reports or recommendations on all matters required to be dealt with by the Governor-General under this Act or referred to the Board by the Governor-General, and no such matters shall be submitted for the consideration of the Governor-General unless accompanied by a report or recommendation of the Board.

(2) If the Governor-General does not approve of any recommendation, he may require the Board to furnish a fresh recommendation, which shall be considered and dealt with by the Governor-General.

(3) If the Governor-General does not approve of the fresh recommendation, a statement of the reasons for not approving shall be laid before both Houses of the Parliament within thirty days of the receipt of the recommendation, if the Parliament is then sitting, and, if not, then within fourteen days of the next meeting of the Parliament.

19. (1) The Board may at any time—

a) enter any Department for the purpose of carrying out its duties;

b) summon any person whose evidence appears to be material to the determining of any subject of inspection, inquiry, or investigation being conducted by the Board;

c) take evidence on oath; and

d) require the production of documents.

(2) Any officer who, without reasonable cause, neglects or fails to attend in obedience to the summons, or to be sworn, or to answer questions or produce documents relevant to the subject of the inspection, inquiry or investigation, shall be guilty of an offence against this Act.

(3) Any person, not being an officer, who, after payment or tender of reasonable expenses, neglects or fails, without reasonable cause, to attend in obedience to the summons, or to be sworn, or to answer questions or produce documents relevant to the subject of the inspection, inquiry or investigation, shall be guilty of an offence.

Penalty: Twenty pounds.

(4) Nothing in this section shall be construed as compelling a person to answer any question which would tend to criminate him.

20. If at any time the Board finds that a greater number of officers is employed in any Department or Branch of a Department than is necessary for the efficient working of that Department or Branch, any officer whom the Board finds is in excess may be transferred to such other position of equal classification and salary in the Service as the officer is competent to fill, and if no such position is available the officer may be transferred to a position of lower classification and salary. If no position is available for the officer the Board may retire him from the Public Service.

21. (1) The Board shall keep a record of all officers in the Commonwealth Service, showing, with regard to each officer, his age and date of appointment, the office he holds, and his division, class, and salary under this Act.

(2) The Board shall, in the month of August in each year or as soon as practicable thereafter, forward to the Governor-General, and publish in the *Gazette*, a list of all officers in the Commonwealth Service on the thirtieth day of June in that year, together with the particulars so recorded with regard to the service of each officer.

(3) The list so published shall be *primâ facie* evidence of the information contained therein.

(4) A copy of such list shall be laid before both Houses of the Parliament within fourteen days of the publication thereof, if the Parliament is then sitting, or, if not, then within fourteen days after the next meeting of the Parliament.

22. (1) The Board shall furnish to the Prime Minister, at least once in each year, for presentation to the Parliament, a report on the condition and efficiency of the Public Service, and of the proceedings of the Board, and in that report shall set forth any changes and measures necessary for improving the working of the Public Service, and especially for insuring efficiency and economy therein or in any Department or branch thereof.

(2) The Board shall in the report draw attention to any breaches or evasions of this Act which may have come under notice.

PART III. THE COMMONWEALTH SERVICE

DIVISION 1. DIVISIONS

23. The Commonwealth Service shall consist of four Divisions, that is to say—

The First Division;
The Second Division;
The Third Division; and
The Fourth Division.

24. (1) The First Division shall include all Permanent Heads of Departments and such other officers as the Governor-General determines.

(2) The Second Division shall include officers who, under officers of the First Division, are required to exercise executive or professional functions in the more important offices of the Service, and whose offices the Governor-General, on the recommendation of the Board, directs to be included in that Division.

(3) The Third Division shall include all officers whose offices the Governor-General, on the recommendation of the Board, directs to be included in that Division.

(4) The Fourth Division shall include all officers not included in the First, Second, or Third Division.

25. (1) The persons for the time being holding the several offices specified in the Third Schedule to this Act, or any offices which are prescribed either in addition to or in lieu of any of those offices, shall be Permanent Heads of Departments.

(2) The Permanent Head of a Department shall be responsible for its general working, and for all the business thereof, and shall advise the Minister in all matters relating to the Department.

(3) The Permanent Head may, in any case in which he thinks fit, exercise any or all of the powers conferred by this Act on a Chief Officer, and in that event any reference in this Act to a Chief Officer shall, unless inconsistent with the context, be taken to refer to the Permanent Head.

(4) The Chairman of the Board, the Auditor-General, and the Commissioner of Taxation shall severally have all the powers of a Permanent Head under the provisions of this Act, so far as relates to the branches of the Service respectively under their direct control.

(5) A Permanent Head may, in respect of any officers or class of officers of his Department, delegate in writing to any officer all or any of his powers and functions under this Act (except this power of delegation) so that the delegated powers and functions may be exercised by the delegate as fully and effectually as by the Permanent Head.

(6) Any delegation under this section shall be revocable at will and shall not prevent the exercise of any power or function by the Permanent Head.

26. (1) The Chief Officers of Departments shall be those persons who for the time being hold the offices which are prescribed as constituting the holders thereof *ex officio* Chief Officers of Departments.

(2) A Chief Officer of a Department shall have and may exercise and perform under this Act, within such parts of the Commonwealth as are prescribed, such powers, authorities, and duties as are prescribed, or as are assigned to him by the Permanent Head.

(3) In the absence of a Chief Officer, an officer appointed for the purpose by the Permanent Head shall perform the duties of the Chief Officer, unless it is otherwise directed by the Governor-General, and anything done by that officer shall be as good and effective for all purposes and against all persons whatsoever as if done by the Chief Officer.

(4) If the Governor-General notifies by proclamation that for the purposes of the administration of any Department any portion of a State or Territory is attached to any adjoining State, the Chief Officer of that Department in that adjoining State shall be the Chief Officer of that Department in the portion so attached.

DIVISION 2. CLASSIFICATION

27. (1) As soon as may be after the commencement of this Act, the Board shall classify officers, other than officers of the First Division, within the Divisions specified in section twenty-three of this Act, in accordance with the importance and character of the work performed, and the classification of each office, the officer assigned to the office, and the salary of the officer shall be notified in the *Gazette.* The classification of the Commonwealth Service may be gazetted wholly or in sections, as the Board deems expedient.

(2) Any officer dissatisfied with the action of the Board may forward to the Board, within thirty days after the notification of the classification affecting himself or his office, a notice of appeal setting forth the grounds of his dissatisfaction:

Provided that, in the case of officers in remote districts, the Board may extend the time within which a notice of appeal may be forwarded under this sub-section.

(3) The Board shall, as prescribed, consider the appeal in conference with a representative of the Permanent Head of the Department concerned, and with the appellant, or, if he so desires, with a nominee (who is an officer) of the appellant, and following upon such conference the Board shall determine the appeal.

(4) Upon determination of the appeal, the Board shall, where necessary, amend the classification accordingly, and shall thereupon submit the classification to the Governor-General for approval.

(5) If the Governor-General approves of the classification, a notification of such approval, together with a statement of any alterations made in the classification upon appeal, shall be published in the *Gazette.*

(6) Notwithstanding any determination made under the *Arbitration (Public Service) Act* 1920, upon the publication in the *Gazette* of the notification of the approval of the Governor-General of the classification (in this subsection referred to as "the approved classification"), the classifications and salaries of the offices and of the officers assigned thereto dealt with in the approved classification shall, subject to this Act, be those respectively allotted to those offices and officers by the classification:

Provided that nothing in this sub-section shall be deemed to affect the operation of any determination made by the Arbitrator of a claim relating to the salaries allotted by the approved classification.

28. With the case of any officer who is in receipt of a greater salary than the maximum salary determined under the classification to be appropriate to the office occupied by him, the Board shall deal in the following manner:

a) If an office of classification corresponding to the salary received by the officer is available, or becomes available within a period of twelve months after the date of approval of the classification by the Governor-General, and in the opinion of the Board the officer is competent to fill that office, the Board may transfer him thereto;

b) If no such office which in the opinion of the Board the officer is competent to fill is or becomes so available, the Board shall, at the expiration of the period of twelve months above mentioned, reduce the salary of the officer to the maximum salary appropriate under the classification to the office occupied by him;

c) If any such reduction of salary is certified by the Board to have been made on the ground only that no such office was available, the officer shall, notwithstanding the reduction, remain eligible for promotion as from the class or position to which his salary before reduction was incident, and shall be entitled to employment on the class of work to which his previous salary was appropriate, as soon as a vacancy occurs therein which, in the opinion of the Board, he is competent to fill, in preference to any other officer of the same or a lower class or position whose salary has not been so reduced.

29. The Governor-General may, on the recommendation of the Board, after obtaining a report from the Permanent Head—

a) create a new office in any Division in any Department;

b) abolish any office in any Department; or

c) raise or lower the classification of any office.

DIVISION 3. SALARIES OF OFFICERS

30. Except in the case of officers of the First Division, who shall be paid such salaries as are provided in the Appropriation Act, and officers paid at a specified rate by virtue of any other Act, officers shall be paid salaries in accordance with such amounts or scales as are prescribed.

31. (1) Increments of salary which are prescribed within the limits of a class or in respect to any particular office shall be annual, except where otherwise prescribed, and no increment shall accrue to any salary until the officer in receipt of the salary has received the salary for a period of twelve months.

(2) The right to receive an increment in any year shall depend upon the good conduct, diligence and efficiency of the officer and the period of attendance for duty during that year.

(3) If, in the opinion of the Permanent Head, an officer is not entitled to receive an increment, he may issue an order in writing depriving the officer of the increment for such time as the Permanent Head considers justified, and in that event the increment shall, subject to the succeeding provisions of this section, not be paid.

(4) Any officer affected by any such order may appeal to the Board against the order.

(5) The Permanent Head shall forward the appeal with a report to the Board, and the Board shall, after full inquiry, determine the appeal.

. . . .

DIVISION 4. ENTRANCE EXAMINATIONS AND APPOINTMENTS

33. (1) No person shall be admitted to the Commonwealth Service unless—

a) he is a natural-born or naturalized British subject;

b) the Board is satisfied, upon such medical examination as is prescribed, as to his health and physical fitness;

c) (except as hereinafter provided) he has successfully passed the prescribed entrance examination; and

d) he makes and subscribes an oath or affirmation in the form in the Fourth Schedule to this Act.

(2) The Board may from time to time, appoint such examiners as are necessary for the conduct of the prescribed examinations, and may at any time remove any examiners so appointed.

34. (1) Separate entrance examinations shall be held in connexion with the Third and Fourth Divisions respectively, and shall be designed to test the efficiency and aptitude of candidates for employment generally or in particular offices in those Divisions, but the educational examination for the Fourth Division shall be of an elementary character.

(2) The Board shall, as far as practicable, arrange the times and places of entrance examinations, so that persons shall have reasonable facility for competing at examinations held in the State and locality in which they reside.

(3) The Board shall from time to time, as entrance examinations are required, give public notice thereof in such manner as is prescribed, stating the number of appointments proposed to be made, the division, class, or position, and salary, and the date and place of examination.

35. (1) Any person who at any examination held under this Act personates any candidate, and any candidate who allows himself to be personated, shall be guilty of an offence against this Act.

Penalty: One hundred pounds or imprisonment for six months.

(2) If any person who is convicted of an offence against this section is employed in the Commonwealth Service he may be dismissed therefrom by the Board.

36. (1) Any person who, before the time fixed for any particular examination held under this Act—

a) improperly obtains possession of; or

b) without authority (proof whereof shall lie upon him) furnishes to any person,

any examination paper, or particulars relating to any examination paper, shall be guilty of an offence.

Penalty: One hundred pounds or imprisonment for six months.

(2) If any person who is convicted of an offence against this section is

employed in the Commonwealth Service, he may be dismissed therefrom by the Board.

37. (1) Except as hereinafter provided, every person admitted to the Commonwealth Service shall in the first instance be appointed by the Board on probation only, and may be continued on probation for a period of six months, but his services may be dispensed with by the Board at any time during that period.

(2) After the period of six months on probation has expired, the Board may, upon a report from the Chief Officer, confirm or annul the appointment, or extend the period of probation for a further period, provided that the whole term of probation shall not in any case exceed twelve months.

(3) Upon the expiration of any extended period of probation the Board shall, upon a report from the Chief Officer, confirm or annul the appointment.

(4) Unless otherwise determined by the Board no probationer whose appointment has been annulled shall be eligible as a probationer at any time within twelve months from the date of the annulment.

38. Any person not more than fifty years of age, who has served in the permanent Naval Forces of the Commonwealth for the full period for which he enlisted or engaged, and has a satisfactory record, shall be eligible for appointment by the Board without examination, to any office in the Fourth Division in the Department of Trade and Customs or in the Department of Health.

39. Where the Board reports to the Governor-General that it is not desirable that the examination system shall be applied in relation to an appointment to a specified position, or in relation to appointments to a specified class of positions, in the Fourth Division, the Board may appoint a person without examination to that position, or to a position in that class.

40. (1) No person shall be appointed to the Fourth Division whose age at his last birthday previous to appointment was less than sixteen years, or, except as in the next sub-section provided, more than fifty years.

(2) In the case of special duties, the Board may extend the age from fifty to fifty-five years.

(3) Nothing in this section shall be taken to prevent the appointment of persons above the age of fourteen years as messengers, telegraph messengers, or in such other capacities in the Fourth Division as the Board determines.

41. Every person appointed as a telegraph messenger shall cease to be employed in the Commonwealth Service on attaining the age of eighteen years, unless he has, before reaching that age, passed the examination prescribed for promotion.

42. If the Board is satisfied that it is desirable in the interests of the Commonwealth that the appointment be made, the Board may appoint, without examination or probation, any officer of the Territorial Service or the Commonwealth Railways Service to any office in the Commonwealth Service.

43. (1) The Governor-General may, upon the recommendation of the

Board, transfer for a specified period any officer of the Commonwealth Service to an office in the Territorial Service, or any officer of the Territorial Service to an office in the Commonwealth Service.

(2) Any such transfer shall be regarded as temporary, and shall be made upon such conditions as are determined by the Governor-General.

(3) Upon the completion of the specified period of transfer the officer shall return to his former Department and to his former office, or to another office in that Department not inferior in status to his former office.

44. Any officer of the Public, Railway, or other Service of a State employed in a permanent capacity, whether appointed thereto before or after the commencement of this Act, may be appointed to the Commonwealth Service by the Board, without examination and, if the Board thinks fit, without probation.

45. Where any officer of the Public, Railway or other Service of a State, whether or not he was an officer of that Service at the date of the establishment of the Commonwealth, was transferred to the Commonwealth Service before the commencement of this Act, he shall preserve all his existing and accruing rights, and shall be entitled to retire from office at the time, and on the pension or retiring allowance, which would be permitted by the law of the State from which he was transferred, if his service with the Commonwealth were a continuation of his service with the State.

46. Any person having at any time either before or after the commencement of this Act retired from any salaried office, not being of a temporary or casual character, in the Commonwealth or Territorial Service, or in the Public, Railway or other Service of any State, may, if not more than fifty years of age, be appointed by the Board to the Commonwealth Service without examination, and, if the Board thinks fit, without probation.

47. (1) If at any time in any special case it appears expedient or desirable in the public interest to appoint to a Division other than the Fourth Division some person who is not in the Commonwealth Service, and who is not eligible under the conditions otherwise prescribed for admission to the Commonwealth Service, the Governor-General may, on the recommendation of the Board upon report from the Permanent Head, appoint such person accordingly without examination and, if the Governor-General thinks fit, without probation.

(2) No such appointment shall be made until the Board has certified that in its opinion there is no officer available in the Commonwealth Service who is as capable of filling the position to which it is proposed that the appointment shall be made. A copy of every recommendation, report, and certificate under this section shall, within fourteen days after the making of the appointment, be laid before both Houses of the Parliament, if the Parliament is then sitting, or, if not, then within seven days of the next meeting of the Parliament.

48. (1) Where a person becomes an officer of the Commonwealth Service and his service in the Commonwealth Service is continuous with—

a) permanent service in the Public, Railway or other Service of a State;

b) permanent service in a Territorial Service or the Commonwealth Railways Service;

c) permanent service in a civil capacity in the Department of Defence; or

d) service in a permanent capacity in the Naval or Military Forces of the Commonwealth,

the continuous service of that person in any service specified in paragraph (*a*), (*b*), (*c*) or (*d*) of this sub-section shall be reckoned for the purposes of this Act as service in the Commonwealth Service.

(2) Where a person to whom this section applies has been engaged in two or more of the services specified in paragraphs (*a*), (*b*), (*c*) and (*d*) of the last preceding sub-section, and the periods he was so engaged are continuous with one another, those periods of service shall be deemed to be continuous service for the purposes of this section.

49. (1) No married woman shall be eligible for employment, either permanently or temporarily, in the Commonwealth Service, unless the Board certifies that there are special circumstances which make her employment desirable.

(2) Every female officer shall be deemed to have retired from the Commonwealth Service upon her marriage, unless the Board certifies that there are special circumstances which make her employment desirable.

DIVISION 5. PROMOTIONS AND TRANSFERS

50. (1) Whenever a vacancy occurs in any office other than in the First Division, and it is expedient to fill that vacancy by the transfer or promotion of an officer, the Board may, subject to the provisions of this Act, after report from the Permanent Head of the Department in which the vacancy occurs, transfer or promote an officer to fill the vacancy, consideration being given first to the relative efficiency and in the event of an equality of efficiency of two or more officers, then to the relative seniority of the officers available for transfer or promotion to the vacancy.

(2) In this section "efficiency" means special qualifications and aptitude for the discharge of the duties of the office to be filled, together with merit, diligence and good conduct, and, in the case of an officer who is a returned soldier, includes such efficiency as, in the opinion of the Board, he would have attained but for his absence on active naval or military service.

(3) Any promotion made in pursuance of sub-section (1) of this section shall be provisional and without increased salary pending confirmation, and shall be notified in the prescribed manner and shall be subject to the right of appeal to the Board.

(4) An appeal under this section shall be made in such manner and within

such time as is prescribed, and may be made by any officer who considers that he is more entitled to promotion to the vacant office than the officer provisionally promoted, on the ground of—

a) superior efficiency, or

b) equal efficiency, and seniority.

(5) An appeal under this section shall be considered, as prescribed, by the Board in conference with a representative of the Permanent Head of the Department to which the provisional promotion has been made, and with the appellant, or, if he so desires, with a nominee (who is an officer) of the Public Service organization to which the appellant belongs, or with an agent (who is an officer) of the appellant, and following upon such conference the Board shall determine the appeal.

(6) Where an appeal is upheld by the Board, it shall promote the appellant officer to the vacant office and cancel the provisional promotion.

(7) Where an appeal is disallowed in pursuance of this section, or no appeal is lodged within the prescribed time, the provisional promotion shall be confirmed by the Board.

51. In any case where it is expedient to fill a vacancy in any office in a Department by transfer, not involving promotion, of an officer from some other Department, such transfer may be made by the Board.

52. (1) The Board may permit any officer to decline an offer of promotion or transfer without prejudice to his right of future promotion or transfer.

(2) No officer shall refuse compliance with an order of the Board, directing his removal from one position to another of equal or higher status. Disregard or disobedience of any such order shall be deemed to be a breach of the provisions of this Act.

53. (1) The Board may provide by regulation that transfer or promotion to any specified offices, or promotion from one class to another in any specified offices, shall be dependent upon passing such examination, or upon the possession of such qualifications, as is or are prescribed for such transfer or promotion.

(2) The Board may appoint examiners for the purpose of carrying out the provisions of this section.

54. (1) Subject to the next succeeding sub-section all appointments and promotions in or to the First Division shall be made by the Governor-General on the recommendation of the Board, consideration being given first to the relative efficiency, or in the event of an equality of efficiency of two or more officers, then to the relative seniority of those officers.

(2) Notwithstanding anything contained in this Act, appointments to any position of Permanent Head may be made by the Governor-General without reference to the Board.

DIVISION 6. OFFENCES

55. (1) An officer (other than an officer in the First or Second Division) who—

a) wilfully disobeys or disregards any lawful order made or given by any person having authority to make or give the order; or

b) is negligent or careless in the discharge of his duties; or

c) is inefficient or incompetent through causes which appear to be within his own control; or

d) uses intoxicating liquors or drugs to excess; or

e) is guilty of any disgraceful or improper conduct, either in his official capacity or otherwise; or

f) commits any breach of the provisions of this Act or any regulations thereunder; or

g) having made or subscribed an oath or affirmation in the form in the Fourth Schedule to this Act, does or says anything in violation of that oath or affirmation,

shall be guilty of an offence, and shall be liable to such punishment as is determined upon under the provisions of this section.

(2) If the Chief Officer, or any officer prescribed as having power to deal with minor offences, has any reason to believe that an officer has committed a minor offence, he may call upon the officer for an explanation as to the alleged offence, and if, on consideration of the explanation, he is of opinion that the offence has been committed, he may caution or reprimand the offending officer, or fine him a sum not exceeding Five shillings. Any caution, reprimand, or fine by an officer other than the Chief Officer shall be forthwith reported to the Chief Officer, and where the offence has been punished by a fine, the officer affected may appeal to the Chief Officer within forty-eight hours of the notification to him of the punishment. Upon such appeal the Chief Officer may confirm, annul, or reduce the punishment, and his decision shall be final.

(3) Where there is reason to believe that an officer (not being an officer of the First or Second Division) has committed an offence, other than a minor offence punishable under the provisions of the preceding sub-section—

a) The officer may be charged by the Chief Officer, or any other officer prescribed as having power to lay a charge, and may if it is considered that the charge is of such a serious nature that the charged officer should not continue in the performance of his duty, be suspended by the Chief Officer, or, in emergent cases, by any other officer having power as aforesaid.

b) Suspension may be effected prior to or at the time of, or subsequent to, the laying of the charge, and may be removed at any time by the Chief Officer pending determination of the charge, or, in any case where the charge has not been sustained, immediately upon a finding to that effect.

c) Upon a charge being laid against an officer, he shall forthwith be furnished with a copy of the charge, and shall be directed to reply forthwith in writing, stating whether he admits or denies the truth of the charge, and giving any explanation he desires in regard thereto. If a reply is not made by the officer within seven days of his receipt of the charge, the officer shall be deemed to deny the truth of the charge.

d) If the Chief Officer, after consideration of reports relating to the offence and charge and the reply and explanation, if any, of the officer charged, and any further reports he may consider necessary, is of opinion that the charge has been sustained, he may—

i) fine the officer any sum not exceeding Five pounds; or
ii) reduce his salary; or
iii) reduce him to a lower Division, class or position, and salary; or
iv) transfer him to some other position or locality, which transfer may be in addition to fine or reduction; or
v) recommend to the Board the dismissal of the officer from the Service:

Provided that if the punishment so imposed or recommended by the Chief Officer be other than a fine not exceeding Two pounds the officer may appeal, in such manner and within such time, not less than seven days, as is prescribed, against the decision of the Chief Officer, and the appeal shall be heard by an Appeal Board constituted as hereinafter prescribed.

e) If no appeal is made by an officer against a recommendation that he be dismissed, the Board of Commissioners may dismiss the officer or impose any other punishment specified in the last preceding paragraph.

(4) Appeal may be made on the ground of innocence of the charge, or excessive severity of the punishment, and the Appeal Board may confirm, annul, or vary the decision appealed against by imposing any other punishment specified in the last preceding sub-section, and its decision shall be final, except that in any case where the Appeal Board considers the officer should be dismissed, the case shall be referred by the Chairman of the Appeal Board to the Board of Commissioners, which may dismiss the officer from the Commonwealth Service, or may impose any such other punishment as is prescribed in the preceding sub-section. In the hearing of any appeal against the excessive severity of the punishment the Appeal Board shall take into consideration the previous record of the officer.

(5) An Appeal Board constituted under this section shall comprise—

a) a permanent Chairman, who shall be an officer of the Commonwealth Service, and shall have the qualifications of a Stipendiary or Police Magistrate, and shall be appointed to the office by the Board of Commissioners, but shall not while sitting as Chairman of an Appeal Board be subject to direction by any person or authority under this Act;

b) an officer of the Department to which the appellant belongs, (not being an officer concerned in the laying of the charge against the appellant), appointed by the Chief Officer for the purpose of the particular appeal to be heard;

c) the officer who is the elected representative of the Division to which the appellant belongs in the State or part of the State in which he performs his duties or an officer appointed in pursuance of sub-section (6) of this section.

Any two members of an Appeal Board may by consent of the parties concerned exercise all the powers of the Board for investigation and decision.

(6) In the case of the illness, absence or suspension of an officer who is the elected representative of the Division to which the appellant belongs, or of there being no elected representative of that Division, or where the Board of Commissioners is of opinion that, by reason of his being personally interested in, or affected by, any matter which is the subject of appeal under this section, it is undesirable that the elected representative should act as a member of an Appeal Board, the Board of Commissioners may appoint another officer of the same Division to act temporarily as a member of an Appeal Board in lieu of an elected representative.

(7) Every member of an Appeal Board shall, before proceeding to perform the duties or exercise the powers of a member of an Appeal Board, take an oath or make an affirmation in the form in the Fifth Schedule to this Act.

(8) Notwithstanding anything contained in sub-section (5) of this section, an Appeal Board constituted to hear an appeal by an officer of the Senate or of the House of Representatives, or of both Houses of the Parliament, shall comprise—

a) the Permanent Head of a Department nominated by the President or Speaker or the President and Speaker, as the case may be;

b) the Permanent Head of a Department nominated by the officers of the Department of the Parliament to which the appellant belongs; and

c) the elected representative of the Division to which the appellant belongs in the State or part of the State in which he performs his duties:

Provided that the Permanent Head nominated under paragraph (*a*) or (*b*) of this subsection shall not be the Permanent Head of the Department to which the appellant belongs.

(9) The members of the Appeal Board constituted in pursuance of the last preceding sub-section shall elect one of their number to be Chairman and any two members of the Board may exercise all the powers of the Board for investigation and decision. The decision of the Board shall be final.

(10) Where an officer has been suspended under this section and—

a) the Chief Officer, after consideration of reports relating to the offence and charge and the reply and explanation, if any, is of opinion that the charge against the officer has not been sustained; or

b) an Appeal Board finds that the charge against the officer is not proved, the Chief Officer shall forthwith remove the suspension.

56. (1) Where any officer of the First or Second Division is charged by any person with any of the offences mentioned in the preceding section, the Minister may suspend the officer, and upon such suspension shall forthwith report the charge and suspension to the Board. If the officer does not in writing admit the truth of the charge, the Board shall appoint a Board of Inquiry (consisting of three persons, one of whom shall be the Chairman of the Board of Inquiry, and which shall not include the person by whom the charge was made), which shall inquire into the truth of the charge and shall report to the Board its opinion thereon.

(2) If any of the charges are admitted, or are found by the Board of Inquiry to be proved, then the Board of Commissioners may make such recommendation as to the punishment or otherwise of the person charged as to the Board seems fit. On receiving such recommendation, the Governor-General may dismiss the officer from the Commonwealth Service, or reduce the officer to a lower Division and salary, or impose such penalty or other punishment as the case demands.

(3) If the charges are found by the Board of Inquiry not to be proved, the suspension shall be immediately removed by the Minister.

57. (1) Any officer, upon the hearing by a Board of Inquiry or Appeal Board in relation to any charge against him, shall be entitled to be represented by counsel, attorney, or agent, who may examine witnesses and address the Board on his behalf. The charging authority may likewise be represented at such hearing by counsel, attorney, or agent.

(2) It shall be the duty of the Board of Inquiry or Appeal Board to make a thorough investigation without regard to legal forms and solemnities, and to direct itself by the best evidence which it can procure or which is laid before it, whether the evidence is such as the law would require or admit in other cases or not.

(3) If an Appeal Board is of opinion that the appellant officer had no reasonable grounds for appeal, and that the appeal was frivolous or vexatious, it may recommend to the Board of Commissioners that the officer be required to pay such sum as the Appeal Board thinks fit, but not exceeding the cost of the hearing, and the Board may order the appellant to pay such sum or such less amount as it thinks fit, and the sum so ordered shall be recoverable in the manner prescribed for the recovery of fines for breaches of the Act or regulations.

58. (1) The Chairman of any Board of Inquiry or Appeal Board may at any time—

a) summon any person whose evidence appears to be material to the determination of any subject of inspection, inquiry, or investigation being conducted by the Board;

b) take evidence on oath; and

c) require the production of documents.

(2) Any officer who, without reasonable cause, neglects or fails to attend

in obedience to the summons, or to be sworn, or to answer questions or produce documents relevant to the subject of the inspection, inquiry, or investigation, shall be guilty of an offence against this Act.

(3) Any person, not being an officer, who, after payment or tender of reasonable expenses, neglects or fails, without reasonable cause, to attend in obedience to the summons, or to be sworn, or to answer questions or produce documents relevant to the subject of the inspection, inquiry or investigation, shall be guilty of an offence.

Penalty: Twenty pounds.

(4) Nothing in this section shall be construed as compelling a person to answer any question which would tend to criminate him.

59. (1) Where it appears to an Appeal Board that it is undesirable, by reason of the officer charged being stationed in a remote locality, or by reason of expense, inconvenience, or delay, to require the officer or any particular witness to attend before the Appeal Board to give evidence, the Appeal Board may, by order in writing under the hand of the Chairman, appoint some fit and proper person to take the evidence of the officer or witness.

(2) The person so appointed shall take the evidence of the officer or witness on oath or affirmation, and for the purpose of so doing shall have all the powers of the Chairman of the Appeal Board.

(3) Any party to the appeal entitled to be represented before the Appeal Board shall be entitled to be represented before any person taking evidence in pursuance of this section.

(4) The evidence so taken shall be certified under the hand of the person taking it and forwarded to the Appeal Board, and considered by it in connexion with the appeal.

60. (1) In any case where a charge against an officer is dealt with by a Board of Inquiry or Appeal Board, a copy of all documents intended to be used at the inquiry shall, where practicable, be furnished to the officer at least seven days before the inquiry is held.

(2) Where any charge against an officer is dealt with by a Board of Inquiry or Appeal Board, that Board shall have the right to direct that the inquiry shall be held in public or in private.

(3) In any case where a Board finds that the charge is not proved or upholds the appeal, it may recommend that the reasonable expenses, or any part thereof incurred by the officer in meeting the charges or prosecuting the appeal be paid, the amount of such expenses to be mentioned in the recommendation, and, if approved by the Board of Commissioners, the amount may be paid to the officer.

(4) Where an officer has been suspended for an offence under this Act, he shall be entitled to receive his salary during the period of suspension, unless he absconds, or unless otherwise ordered by the Board, upon report of the Chief Officer.

61. (1) In the event of the address for the time being of an officer being

unknown to the Minister, the Board, Permanent Head, Chief Officer, Board of Inquiry or Appeal Board, as the case may be, all notices, orders, or communications to or for the officer shall be posted to the last-known address of the officer, and compliance with this section shall be deemed a sufficient service on the officer of any such notice, order, or communication.

(2) Where any such notice, order, or communication relates to any charges made against an officer, then if, within any time specified in the notice, order, or communication, no answer is received by the authority which has asked whether the officer admits the truth of the charges brought against him, the officer shall be deemed to deny the truth of the charges, and the charges may be dealt with in the absence of the officer.

62. (1) Where an officer is charged with having committed any criminal offence against the law of the Commonwealth or of a State, punishable either on indictment or on summary conviction, he may be suspended by an authorized officer.

(2) If the officer is convicted of the offence by any Commonwealth or State Court, the Board may (whether the officer has been suspended or not) dismiss him from the Commonwealth Service, or reduce him to a lower Division, class, or position and salary, or reduce his salary, or inflict such other punishment as the case demands.

(3) Any officer who is so suspended or dismissed shall, unless the Board otherwise directs, not receive any salary from the date upon which or for the period during which, he ceased to perform the duties of his office.

(4) The Chief Officer may at any time remove the suspension of any officer suspended under this section, whether before or after conviction.

(5) This section shall not prevent an officer from being dealt with under some other provision of this Act, but an officer shall not be punished under this Act twice in respect of the same offence or matter.

63. (1) If the estate of an officer is sequestrated either voluntarily or compulsorily for the benefit of his creditors, the officer shall apply, as soon as he may legally do so, to a Court of Bankruptcy or Insolvency for a certificate of discharge.

(2) If it appears to the Court that the applicant has been guilty of fraud, dishonorable conduct, or extravagance, the Court shall direct the Clerk of the Court thereupon to report the same to the Permanent Head or Chief Officer of the Department in which the officer is employed.

(3) If the officer does not apply as aforesaid for a certificate of discharge, or if he applies, and it appears from the report that the officer has been guilty of fraud, dishonorable conduct, or extravagance, the officer may be dismissed by the Board from the Commonwealth Service, or reduced to a lower Division, class, or position or salary, or punished in such other manner as the case demands.

64. An order for the attachment of the salary wages or pay of any officer or employee in the Commonwealth or Provisional Service may be made by any court of competent jurisdiction.

65. (1) On receipt of notice of any pecuniary penalty imposed upon, or any order for the payment of money made against, any officer or employee under the authority of this Act, the officer who pays the salary wages or pay of the officer or employee so punished or against whom the order is made, shall deduct from any salary wages or pay payable to the officer or employee the amount of the penalty, or the sum ordered to be paid, as the case may be, unless he is satisfied that payment has been made by the officer or employee.

(2) The deduction may be made by instalments equal as nearly as practicable to one-fourth of the salary wages or pay due from time to time to the officer or employee.

(3) All fines and penalties imposed under this Act shall be paid into and form part of the Consolidated Revenue.

66. Any officer or officers of the Commonwealth Service directly fomenting, or taking part in any strike which interferes with or prevents the carrying on of any part of the Public Services or utilities of the Commonwealth shall be deemed to have committed an illegal action against the peace and good order of the Commonwealth, and any such officer or officers adjudged by the Board, after investigation and hearing, to be guilty of such action, shall therefor be summarily dismissed by the Board from the Service, without regard to the procedure prescribed in this Act for dealing with offences under the Act.

DIVISION 7. INCAPACITY OF OFFICERS

67. If an officer appears to the Board or the Chief Officer to be inefficient or incompetent or unfit to discharge or incapable of discharging the duties of his office efficiently, the Board may, after report from the Chief Officer, and after investigation into the circumstances, retire the officer from the Commonwealth Service from a date to be specified by the Board, or may transfer him to some other position, with salary appropriate to such other position.

DIVISION 8. LEAVE OF ABSENCE AND HOLIDAYS

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DIVISION 9. RECIPROCAL SERVICES OF COMMONWEALTH AND STATE OFFICERS

77. The fact that any person is an officer of the Public Service of a State shall not disqualify him from also executing the duties of an office in the Commonwealth Service.

78. (1) The Governor-General may arrange with the Governor in Council of any State for the performance or execution by an officer in the Public Service of the State, for the Government of the Commonwealth, of any work or services, or of the duties of any office in the Commonwealth Service.

(2) In any such case, the Governor-General may, by agreement with the Governor in Council of the State or otherwise, make arrangements for determining—

a) the rate of payment to be made by the Government of the Commonwealth for the work or services to be performed or the duties to be executed for the Commonwealth by the officer; and *b*) any matters which may require to be adjusted with regard to the performance of the work or services, or the execution of the duties, by the officer.

79. Where an officer of the Commonwealth performs some duties for the Government of a State, the Governor-General may, by agreement with the Governor in Council of the State or otherwise, make arrangements for determining—

a) the rate of payment to be made by the Government of such State for the services performed for the State by the officer; and

b) any matters which may require to be adjusted with regard to the performance of the duties by the officer.

80. The Governor-General may, at the request of the Governor in Council of a State, authorize and cause any work or services to be performed for the Government of the State; and the Governor-General may, by agreement with the Governor in Council of a State or otherwise, make arrangements for determining—

a) the rate of payment to be made by the Government of the State for the performance of the work or services; and

b) any matters which may require to be adjusted with regard to the performance of the work or services.

81. In any case arising under any of the last four preceding sections the Governor-General may, by agreement with the Governor in Council of the State concerned or otherwise, make arrangements for determining, in respect of any officer so employed on behalf of the Commonwealth and of a State, the respective shares of each Government in any pension, retiring allowance, or allowance to dependants which may become payable, under the laws of the State or of the Commonwealth, in respect to the officer.

DIVISION 10. TEMPORARY EMPLOYMENT

82. (1) Whenever the Chief Officer is of opinion that temporary assistance is necessary, he shall advise the Board accordingly.

(2) If the Board is satisfied that such assistance is required, the Board shall select, in such manner as is prescribed, from the register of applicants for temporary employment, such persons who are available as appear to be best qualified for the work:

Provided that where no suitable person is available from the register of applicants for temporary employment the Board may authorize the employment of any person suitable for the work to be performed.

(3) Any such persons shall be paid at such rate as is determined by the Board as being applicable to the work to be performed (not being less than a rate within the limits of payment prescribed for permanent employees for similar work), and shall be entitled to the same public holidays as permanent employees.

(4) Except where otherwise expressly provided, any such person may be

employed for any period not exceeding three months, and if necessary may, with the sanction of the Board, be employed at the end of that period for another further period not exceeding three months; but shall not be so employed for more than six months in any twelve months, except upon the certificate of the Board that temporary assistance is still necessary, and that no other suitable person is available for the work to be performed.

(5) Except where otherwise expressly provided, no person who has been temporarily employed in any Department for at least six months continuously or for at least six months in the whole in any twelve months shall, on the termination of his employment, be eligible for temporary employment in the Commonwealth Service during the six months next following such termination:

Provided that this sub-section shall not apply to persons temporarily employed in the Department of the Senate, the House of Representatives, the Parliamentary Library, or the Parliamentary Reporting Staff, or in the Joint House Department.

(6) The services of any person temporarily employed may be dispensed with at any time by the Chief Officer.

(7) Competitive examinations may be held by the Board for ascertaining the qualifications of persons applying for employment temporarily in the compilation of any census, or for the performance of any work of a Department requiring the services of temporary employees for a prolonged period, and the Board may authorize the employment of the successful competitors for such work for a period not exceeding two years.

(8) Any person temporarily employed for a continuous period extending beyond twelve months may be granted by the Chief Officer leave of absence for recreation, or on account of illness, on such terms and conditions as are prescribed.

DIVISION 11. RETURNED SOLDIERS

83. (1) Notwithstanding anything contained in this Act, a returned soldier whose name is enrolled in the prescribed register for temporary employment shall, if competent for the work required, be considered for temporary employment in priority to any person who is not a returned soldier.

(2) Upon report from the Chief Officer that a returned soldier temporarily employed has satisfactorily performed his duties, the Board may extend his employment for such time as temporary assistance is still required.

(3) Where the employment of a returned soldier has been terminated owing to temporary assistance not being further required, he shall be eligible for further employment at any time after the termination of his previous temporary employment.

84. (1) In the making of appointments to the Commonwealth Service from among persons who have successfully passed the prescribed examination, the Board shall give preference to returned soldiers.

(2) In making any appointments under section thirty-eight, thirty-nine, or forty-seven of this Act preference shall, subject to competency, be given to returned soldiers.

(3) In notifying any proposed examination for admission to the Commonwealth Service, the Board may specify that any particular examination shall be restricted to returned soldiers.

(4) Notwithstanding anything contained in this Act, the Board may by regulations prescribe that any returned soldier who has passed an examination specified in the regulations, whether competitive or otherwise, conducted by an University or other public examining body in any part of the British Dominions, shall be deemed to have passed a prescribed examination conducted by examiners appointed under this Act.

(5) Returned soldiers shall be eligible as candidates for the prescribed examination for admission to the Third Division at any age under fifty-one years, and if successful at the examination may be appointed to such class at such salary within the limits of the class as the Board determines.

(6) Returned soldiers who have passed any prescribed examination for admission to the Public Service for which the maximum age fixed for candidates at the date of examination exceeds sixteen years shall be eligible for appointment to the Public Service at any time before they attain the age of fifty-one years.

(7) Notwithstanding anything contained in this Act, a returned soldier who prior to enlistment was dismissed from the Commonwealth Service or whose resignation was enforced may be appointed by the Board, and if the Board thinks fit the appointment may be without probation.

(8) Notwithstanding anything contained in this Act, a returned soldier may be appointed to the Commonwealth Service, although not free from physical defects due to service in the war, if it is certified by a medical practitioner approved by the Board that the soldier is free from such physical defects as would incapacitate him for the efficient discharge of the duties of the position to which he is to be appointed.

(9) In the making of appointments to positions in the Commonwealth Service of a non-clerical nature the order of preference to returned soldiers shall be as follows:

a) returned soldiers temporarily employed in the Commonwealth Service who have passed the prescribed examination;

b) returned soldiers employed under the *Australian Soldiers' Repatriation Act* 1920 or under the *War Service Homes Act* 1918–1920, who have passed the prescribed examination;

c) returned soldiers who have been temporarily employed continuously for not less than two years, but have not passed the prescribed examination, and in respect of whom the Chief Officer certifies that their duties have been performed in a satisfactory manner:

Provided that any such appointment shall be to a position the duties of which are similar to those which the returned soldier has been performing; and

d) returned soldiers not employed in the Commonwealth Service or under the *Australian Soldiers' Repatriation Act* 1920 or the *War Service Homes Act* 1918–1920, who have passed the prescribed examination.

DIVISION 12. RETIREMENT OF OFFICERS

85. (1) Every officer having attained the age of sixty years shall be entitled to retire from the Commonwealth Service if he desires so to do; but any such officer may (unless retired as hereinafter provided) continue in the Service until he attains the age of sixty-five years.

(2) If any officer continues in the Service after he has attained the age of sixty years, he may at any time before he attains the age of sixty-five years be retired from the Service by the Board, or, in the case of an officer of the First Division, by the Governor-General.

86. When an officer has attained the age of sixty-five years and in the opinion of the Board it is desirable in the interests of the Commonwealth that the officer should continue in the performance of the duties of his office, and the officer is able and willing to do so, the Board may direct the officer to continue in his office for a fixed time not exceeding twelve months, otherwise every officer on attaining sixty-five years of age shall retire from the Service.

87. The application of this Division shall extend to officers to whom section forty-five of this Act applies.

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DIVISION 13. MISCELLANEOUS

91. (1) Except with the express permission of the Board, which permission may at any time be withdrawn, no officer shall—

a) accept or continue to hold an office in or under the Government of any State, or in or under any public or municipal corporation; or

b) accept or continue to hold or discharge the duties of, or be employed in a paid office in connexion with, any banking, insurance, mining, mercantile, or other commercial business, whether carried on by any corporation, company, firm or individual; or

c) engage in or undertake any such business, whether as principal or agent; or

d) engage or continue in the private practice of any profession or trade; or

e) accept or engage in any remunerative employment other than in connexion with the duties of his office or offices under the Commonwealth.

(2) Nothing herein contained shall be deemed to prevent an officer from becoming a member or shareholder only of any incorporated company, or of any company or society of persons registered under any Act in any State or elsewhere.

97. (1) The Board may, with the approval of the Governor-General, make regulations, not inconsistent with this Act, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act, and in particular for the following, namely:

a) for arranging the Second and Third Divisions into classes, and the Fourth Division according to positions, and for determining the limits of salaries to be paid to officers in those classes or positions in the several Departments, or in any specified Department;

b) for prescribing the commencing salary of probationers and providing for rates of commencing salary, according to the age of appointment and qualifications prescribed for appointment;

c) for prescribing the conditions under which officers of a Division may be transferred to any specified office or offices in another Division, and fixing a maximum age for such transfers;

d) for prescribing or regulating the character and standard of competitive entrance examinations, the manner of holding those examinations, the minimum and maximum age of candidates, and for registering, in the order of merit, the names of all persons who have qualified at such examinations, and of those candidates who, having so qualified, may be appointed to fill subsequent vacancies arising within a prescribed period;

e) for prescribing or regulating the conditions under which persons shall be selected for appointment to the Service where appointment may be made without examination;

f) for prescribing courses of study for which recognition may be given by the Board;

g) for prescribing the rates of salaries for female officers in any specified offices in the Commonwealth Service;

h) for regulating the procedure of Boards of Inquiry and Appeal Boards;

i) for prescribing the method of electing representatives of officers of the Third and Fourth Divisions on Appeal Boards and for the division of any State into districts for such purpose, and for specifying that any portion of a State or Territory shall for the purpose of electing a representative be regarded as part of an adjoining State or of a district in that adjoining State;

j) for regulating and determining the scales or amounts to be paid to officers for transfer or travelling allowances or expenses, or allowances in lieu of quarters, or for living in localities where the climatic conditions are severe, or at isolated stations, or in places where, owing to their situation, the cost of living is exceptionally high, and providing for the relief and transfer of officers employed for the prescribed period, in any such locality, or for the partial reimbursement of the cost of conveyance of those officers, their wives, and families when those officers are travelling on recreation leave;

k) for regulating the duties and conduct of officers;

l) for prescribing the form of register of applicants for temporary employment, and the mode in which it shall be kept, and the mode of selecting persons therefrom, and for regulating generally the terms and conditions of temporary employment;

m) for regulating the hours of attendance of officers, and the keeping and signing of records of attendances, or prescribing other methods of recording attendances;

n) for regulating the granting of leave of absence to officers and temporary employees of the Commonwealth Service;

o) for regulating the performance of extra services and payment therefor, and for payment of examiners;

p) for fixing the maximum or minimum age of persons who may be appointed to any particular Division, or class, or position;

q) for providing for notification to the Board of punishments inflicted on officers by virtue of this Act or the regulations thereunder, and for keeping records thereof:

Provided that nothing in the regulations shall authorize the keeping, for more than two years, of the record of any punishment which does not exceed a fine of five shillings;

r) for regulating the notification of vacancies by the Board and the method of applying for such vacancies;

s) for regulating the method of lodging appeals of officers against provisional promotion, deprivation of increment, or punishment;

t) for requiring officers to take oaths or affirmations of secrecy in relation to the matters coming to their knowledge in the course of their employment, and for prescribing the form of such oaths or affirmations;

u) for determining the dates, times, or periods of time at or within which shall be done all things or acts required or permitted by this Act to be done, and in respect of which no dates, times, or periods of time are specifically provided;

v) for prescribing, where there is no provision or no sufficient provision in this Act, in respect to any matter or thing necessary to give effect to this Act, in what manner and form the want of provision or insufficient provision shall be supplied.

(2) Regulations made pursuant to the foregoing provisions of this Act may be made either generally or with respect to any particular case or class of cases, and when made by the Board, and approved by the Governor-General, shall have full force and effect; and such regulations shall be laid before both Houses of the Parliament within seven days after approval by the Governor-General, if the Parliament is in session and actually sitting, or if

not in session or not actually sitting, then within seven days after the commencement of the next session or sitting.

SCHEDULES

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SECOND SCHEDULE

DEPARTMENTS

The Department of the Senate.
The Department of the House of Representatives.
The Department of the Parliamentary Library.
The Department of the Parliamentary Reporting Staff.
The Joint House Department.
The Prime Minister's Department.
The Department of the Treasury.
The Attorney-General's Department.
The Department of Home and Territories.
The Department of Defence.
The Department of Trade and Customs.
The Department of Works and Railways.
The Postmaster-General's Department.
The Department of Health.

THIRD SCHEDULE

PERMANENT HEADS OF DEPARTMENTS

The Clerk of the Senate.
The Clerk of the House of Representatives.
The Parliamentary Librarian.
The Principal Parliamentary Reporter.
The Secretary of the Joint House Department.
The Secretary to the Prime Minister's Department.
The Secretary to the Department of the Treasury.
The Secretary to the Attorney-General's Department.
The Secretary to the Department of Home and Territories.
The Secretary to the Department of Defence.
The Comptroller-General of Customs.
The Secretary to the Department of Works and Railways.
The Secretary to the Postmaster-General's Department.
The Director-General of Health.

FOURTH SCHEDULE

OATH

I, *A. B.*, do swear that I will be faithful and bear true allegiance to the King, and will loyally as in duty bound uphold the Constitution of the Commonwealth of Australia established under the Crown of the United Kingdom. So help me, God!

AFFIRMATION

I, *A. B.*, do solemnly and sincerely affirm and declare that I will be faithful and bear true allegiance to the King, and will loyally as in duty bound uphold the Constitution of the Commonwealth of Australia established under the Crown of the United Kingdom.

Fifth Schedule

OATH

I, *A. B.*, do swear that I will well and truly serve our Sovereign Lord the King as a member of the Appeal Board constituted under the *Commonwealth Public Service Act* 1922 for the purpose of the appeal made by (here insert name of appellant) [*or in the case of the Chairman or elected representative of the Division to which the appellant belongs* as a member of any Appeal Board constituted under the *Commonwealth Public Service Act* 1922 of which I may be a member] and that I will perform the duties and exercise the powers imposed or conferred upon me as such member without fear or favour affection or ill-will. So help me, God!

AFFIRMATION

I, *A.B.*, do solemnly and sincerely affirm and declare that I will well and truly serve our Sovereign Lord the King as a member of the Appeal Board constituted under the *Commonwealth Public Service Act* 1922 for the purpose of the appeal made by (here insert name of appellant) [*or in the case of the Chairman or elected representative of the Division to which the appellant belongs* as a member of any Appeal Board constituted under the *Commonwealth Public Service Act* 1922 of which I may be a member] and that I will perform the duties and exercise the powers imposed or conferred upon me as such member without fear or favour affection or ill-will.

DOCUMENT NO. 2

COMMONWEALTH ARBITRATION (PUBLIC SERVICE) ACT, 1920

No. 28 of 1920

An Act relating to the settlement of matters arising out of employment in the Public Service.

[Assented to 7th October, 1920.]

Be it enacted by the King's Most Excellent Majesty, the Senate, and the House of Representatives of the Commonwealth of Australia, as follows:

1. This Act may be cited as the *Arbitration* (*Public Service*) *Act* 1920.

2. This Act shall commence on a date to be fixed by proclamation.

3. In this Act unless the contrary intention appears—

"Organization" means an organization within the meaning of the *Commonwealth Conciliation and Arbitration Act* 1904–1918;

"The Arbitrator" means the Public Service Arbitrator appointed in pursuance of this Act;

"The Commissioner" means the Public Service Commissioner, and includes, in the case of any service not under the *Commonwealth Public Service Act* 1902–1918, the permanent or executive head of that service;

"The Court" means the Commonwealth Court of Conciliation and Arbitration;

"The Public Service" includes the Public Service of the Northern Territory and of the Territory for the Seat of Government, and the service of any public institution or authority of the Commonwealth, and includes all persons employed in any such service in any capacity, whether permanently or temporarily, and whether under the *Commonwealth Public Service Act* 1902–1918 or not, but does not include persons employed in the Naval or Military Forces only.

4. Employees in the Public Service, or in any division, class, grade or branch thereof, or in any calling, service, handicraft, occupation, or avocation in the Public Service, or in any division, class, grade, or branch thereof, shall be deemed to be employees in an industry within the meaning of the *Commonwealth Conciliation and Arbitration Act* 1904–1918.

5. An association of less than one hundred employees in an industry in the Public Service may be registered under the *Commonwealth Conciliation and Arbitration Act* 1904–1918 as an organization, if its membership comprises at least three-fifths of all the persons who are employees in that industry in the Public Service.

6. (1) For the purposes of this Act, there shall be a Public Service Arbitrator, who shall be appointed by the Governor-General.

(2) The Arbitrator shall be appointed for a term of seven years, and shall be eligible for re-appointment.

(3) If any officer of the Commonwealth is appointed Arbitrator, his services as Arbitrator shall, for the purpose of determining all his existing and accruing rights, be counted as public service in the Commonwealth.

(4) If any officer in the Public Service of a State is appointed Arbitrator, he shall have the same rights as if he had been an officer of a Department transferred to the Commonwealth and were retained in the service of the Commonwealth.

(5) In case of the illness, suspension or absence of the Arbitrator, the Governor-General may appoint a person to act as Deputy Arbitrator during such illness, suspension or absence, and the Deputy Arbitrator shall, while so acting, have all the powers and perform all the duties of the Arbitrator.

7. (1) The salary of the Arbitrator shall be Two thousand pounds a year and the Consolidated Revenue Fund is, to the necessary extent, hereby appropriated accordingly.

(2) There shall be paid to the Arbitrator, on account of his expense in travelling to discharge the duties of his office, such sums as are considered reasonable by the Governor-General.

8. (1) The Governor-General may remove the Arbitrator from office on an address praying for his removal on the ground of proved misbehaviour or incapacity being presented to the Governor-General by the Senate and the House of Representatives respectively in the same session of the Parliament.

(2) The Governor-General may suspend the Arbitrator from office for misbehaviour or incapacity.

(3) A full statement of the grounds of suspension shall be laid before both Houses of the Parliament within seven days after the suspension, if the Parliament is then sitting, or, if the Parliament is not then sitting, within seven days after the next meeting of the Parliament.

(4) The Arbitrator shall be restored to office unless each House of the Parliament within forty days after the statement has been laid before it, and in the same session, passes an address praying for his removal on the grounds of proved misbehaviour or incapacity.

9. The Arbitrator shall be deemed to have vacated his office if—

a) he engages, during his term of office, in any paid employment outside the duties of his office;

b) he becomes bankrupt or insolvent, or applies to take the benefit of any Act or State Act for the relief of bankrupt or insolvent debtors, or compounds with his creditors, or makes an assignment of his salary for their benefit:

c) except on leave granted by the Governor-General, he absents himself from duty for fourteen consecutive days or for twenty-eight days in any twelve months; or

d) he becomes permanently incapable of performing his duties.

10. The Arbitrator shall before proceeding to discharge the duties of his office take an oath or affirmation of allegiance in the form in the Schedule to the Constitution, and also an oath or affirmation in the form following:

I A.B. do swear that I will well and truly serve Our Sovereign Lord the King in the office of Public Service Arbitrator and I will do right to all manner of people according to law without fear or favour affection or ill-will: So help me God.

or

I A.B. do solemnly and sincerely promise and declare that (*&c. as above, except the words "So help me God"*).

11. (1) Notwithstanding anything contained in the *Arbitration* (*Public Service*) *Act* 1911, an organization of employees in the Public Service shall not be entitled to submit to the Court under that Act any claim relating to the salaries, wages, rates of pay, or terms or conditions of service or employment of members of the organization.

(2) All claims relating to the salaries, wages, rates of pay, or terms or conditions of service or employment of members of any organization, which are pending in the Court at the commencement of this Act, other than claims the hearing of which has been commenced by the Court, shall be by force of this Act transferred to the Arbitrator, and shall be deemed to have been submitted to the Arbitrator in pursuance of this Act.

(3) The Court shall not be empowered to make any award or order under the *Arbitration* (*Public Service*) *Act* 1911 as regards any such claim unless the hearing of the claim was commenced by the Court prior to the commencement of this Act.

(4) For the purposes of this Act all awards and orders made by the Court under the *Arbitration* (*Public Service*) *Act* 1911, whether before or after the commencement of this Act, shall be deemed to be determinations made by the Arbitrator under this Act.

(5) Any reference in any Act to the *Arbitration* (*Public Service*) *Act* 1911 shall be read as a reference to this Act.

12. (1) The Arbitrator shall, subject to the provisions of this section, determine all matters submitted to him relating to salaries, wages, rates of pay, or terms or conditions of service or employment of officers and employees of the Public Service.

(2) Any organization shall be entitled to submit to the Arbitrator by memorial any claim relating to the salaries, wages, rates of pay, or terms or conditions of service or employment of members of the organization.

(3) The Arbitrator shall forward a copy of the claim to the Commissioner, and to the Minister of any Department of State affected by the claim.

(4) The Commissioner and the Minister of any Department of State

affected by the claim may within the prescribed time lodge, either jointly or separately, any objections they see fit to make to the granting of the claim.

(5) If any objection is lodged, the Arbitrator shall call a conference, to be presided over by himself, of representatives of the organization and of the Commissioner and of any Minister who has lodged objections to the granting of the claim, and following upon such conference shall, after hearing such evidence (if any) in respect of such matters as have not been agreed to at the conference, as the Arbitrator thinks necessary, determine the claim.

(6) If no objection is lodged, the Arbitrator shall determine the claim in favour of the claimant organization.

(7) The Commissioner, or the Minister of any Department of State or any organization affected by any determination of the Arbitrator, may submit to the Arbitrator an application to vary the determination wholly or in part. The Arbitrator shall forward a copy of the application to the organization affected by the application, and to the Minister of the Department of State affected if the application to vary has been made by the Commissioner, or to the Commissioner if the application to vary has been made by the Minister of the Department affected, or to the Commissioner and the Minister of the Department affected by the application, if the application to vary has been made by an organization.

(8) Any organization or person to which or to whom the Arbitrator has, in pursuance of the last preceding sub-section, forwarded a copy of the application to vary may within the prescribed time lodge any objections it or he sees fit to make to the granting of the application.

(9) If any objection is lodged, the Arbitrator shall call a conference as provided in sub-section (5) of this section, and thereupon the provisions of that sub-section shall apply in like manner as if the application to vary the determination were a claim within the meaning of that sub-section.

(10) If no objection is lodged, the Arbitrator shall determine the application in favour of the organization or the Commissioner or the Minister, as the case may be.

13. (1) In relation to every claim or application made to him in pursuance of this Act, the Arbitrator shall act according to equity, good conscience and the substantial merits of the case, without regard to technicalities or legal forms, and shall not be bound by any rules of evidence, but may inform his mind on any matter in such manner as he thinks fit.

(2) The Arbitrator shall, at the request of the organization which has submitted a claim or application, or of the Commissioner, or of the Minister of any Department of State who has submitted an application or who is affected by the claim or application of the organization, and may, without such request, appoint two assessors to advise him in relation to the claim or application, and the assessors shall discharge such duties as are directed by the Arbitrator or as are prescribed.

(3) One of the assessors shall be a person nominated by the organization,

and the other a person nominated jointly by the Commissioner and the Minister of each Department of State affected by the claim or application, or, in default of such nomination, appointed by the Governor-General.

14. (1) For the purposes of this Act, the Arbitrator shall have power as regards any claim or application submitted to him under this Act—

a) to vary any determination, and to re-open any question and to give an interpretation of any determination;

b) to summon any witness before him, and to compel the production before him of books, documents and things for the purpose of reference to such matters only as relate to the matter of the claim or application;

c) to take evidence on oath or affirmation, such evidence unless otherwise ordered by the Arbitrator for reasons affecting the public interest to be taken in public;

d) to allow the amendment of the claim or application;

e) to declare by any order that any term of a determination shall, subject to such conditions, exceptions, and limitations as are declared in the order, be a common rule of the Public Service or of any branch or part of the Public Service:

Provided that before any common rule is so declared, the Arbitrator shall by notification published in the *Gazette* and in such other publications, if any, as the Arbitrator directs specifying the matter in relation to which it is proposed to declare a common rule, make known that all persons and organizations interested and desirous of being heard may, on or before a day named, appear or be represented before the Arbitrator; and the Arbitrator shall, in manner prescribed, hear all such persons and organizations so appearing or represented; and

f) generally to give all such directions and do all such things as the Arbitrator deems necessary or expedient in the premises.

(2) Any person who, on being summoned as a witness, refuses or fails, without lawful excuse, and after tender of reasonable expenses, to appear in obedience to the summons, or refuses or fails without lawful excuse to be sworn or to make an affirmation or to produce books, documents and things which he is lawfully required to produce, or to answer questions which he is lawfully required to answer, shall be guilty of an offence.

Penalty: Fifty pounds.

15. The Arbitrator may refer any claim or application submitted to him under this Act, or any matter arising out of the claim or application, to a person authorized by the Governor-General in that behalf, for investigation and report, and may delegate to that person such of his powers (other than the power to determine the claim or application) as he deems desirable; and the Arbitrator may, on the report, with or without hearing further evidence or argument, or both, determine the claim of application.

16. The Commissioner, and the Permanent Heads and Chief Officers of the several Departments of State, and all persons in the Public Service, shall

comply with the provisions of any determination of the Arbitrator made under this Act.

17. In making any determination under this Act, the Arbitrator shall not be restricted to the specific claims made or to the subject matter of the claim, but may include in the determination any matter or thing which the Arbitrator thinks necessary in the interests of the public or of the Public Service.

18. No costs shall be allowed in respect of any proceedings under this Act.

19. No person or organization shall in any proceeding under this Act be represented by counsel or solicitor.

20. No determination of the Arbitrator made under this Act shall be challenged, appealed against, reviewed, quashed, or called in question, or be subject to prohibition or mandamus, in any Court on any account whatever.

21. (1) Any determination of the Arbitrator shall be expressed to come into operation as from a date fixed by the Arbitrator, not earlier than after the expiration of thirty days after the determination has been laid before both Houses of the Parliament.

(2) When a determination has been made under this Act, the Arbitrator shall forthwith send to the Prime Minister and to the Attorney-General a certified copy of the determination.

(3) The Prime Minister shall, within fourteen days after its receipt, if the Parliament is then sitting, or, if not, then within fourteen days after the next meeting of the Parliament, cause the determination to be laid before both Houses of the Parliament.

22. (1) The Arbitrator may make a determination which is not in accord with an award or order of the Court, but, except as provided in this section, is not empowered to make any determination which is not in accord with the laws of the Commonwealth and the regulations made thereunder.

(2) The Arbitrator may, where he thinks it proper to do so, make a determination which, in his opinion, is not, or may not be, in accord with a law or regulation of the Commonwealth relating to the salaries, wages, rates of pay, or terms or conditions of service or employment of employees; but in that case he shall send to the Prime Minister, and to the Attorney-General, with the certified copy of the determination, a statement of the laws or regulations of the Commonwealth with which, in his opinion, it is not, or may not be, in accord.

(3) The Prime Minister shall, within fourteen days after its receipt, if the Parliament is then sitting, or if not then within fourteen days after the next meeting of the Parliament, cause the determination, and the statement (if any) of the Arbitrator, to be laid before both Houses of the Parliament.

(4) If, before the determination is laid before the Parliament, the Attorney-General advises the Prime Minister that in his opinion the determination is not in accord with any law or regulation of the Commonwealth referred

to in the opinion, the Prime Minister shall cause the opinion to be laid, together with the determination, before both Houses of the Parliament.

(5) If, in the case of a determination accompanied by such a statement of the Arbitrator, or opinion of the Attorney-General, as is above referred to, either House of the Parliament, within thirty days after the determination with the statement or opinion has been laid before both Houses, passes a resolution disapproving the determination, the determination shall not come into operation.

(6) Except as provided in the last preceding sub-section, but subject to the Constitution, the determination shall, from the expiration of those thirty days or such later period as is specified in the determination, have full force and effect notwithstanding the provisions of any law or regulation of the Commonwealth.

23. The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for carrying out or giving effect to this Act.

DOCUMENT NO. 3

THE NEW SOUTH WALES PUBLIC SERVICE ACT, 1902

Act No. 31, 1902, as amended by the Act No. 21, 1910, the Act No. 56, 1912, the Act No. 40, 1915, the Act No. 43, 1919, the Act No. 36, 1922, and the Act No. 10, 1929.

This Act is also amended or otherwise affected in certain respects which cannot be dealt with under the Amendments Incorporation Act, 1906, by the following Acts, viz.: Act No. 26, 1902; Act No. 8, 1903; Act No. 10, 1908; Act No. 24, 1909; Act No. 11, 1910; Act No. 21, 1910; Act No. 40, 1915; Act No. 28, 1916; Act No. 69, 1916; Act No. 30, 1919; Act No. 43, 1919. See also Act No. 38, 1905, and Act No. 38, 1919.

An Act to consolidate enactments relating to the better regulation of the Public Service.

Be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:

. . . .

PART II. Administration of the Public Service

THE PUBLIC SERVICE BOARD

7. (1) For the purpose of carrying out the provisions of this Act the Governor shall appoint a "Public Service Board," to consist of three persons, who shall be charged with the administration of this Act, and shall have the powers and authority and exercise the duties and functions hereinafter vested in or imposed upon the Board.

(2) Each member of the Board shall be appointed to hold office until he reaches the age of sixty-five years.

(3) One of such persons shall be appointed chairman of the Board. The chairman shall preside at all meetings of the Board at which he is present, and in the case of an equal division of votes, shall have a second or casting vote.

(4) Any two members of the Board shall be a quorum, and subject to the next following provision, shall have all the powers and authority by this Act conferred upon the Board.

(5) If at any meeting of the Board, at which two members only are present, neither of whom is the chairman, such members differ in opinion upon any

matter, the determination of such matter shall be postponed to a meeting at which the chairman is present.

(*5a*) If the chairman disapproves of the decision of the other members of the Board with respect to any matter before the Board for their decision and determination (whether the chairman was or was not present when such decision was given), such matter shall be deferred for not less than twenty-four hours after the decision, or if the chairman was not present when the decision was given, for not less than twenty-four hours after it has been brought to his knowledge by communication in writing or by electric telegraph, when it shall again be brought forward before the Board; and if the chairman again disapproves of the decision of the other members of the Board, the matter shall be determined according to the deliberate judgment of the chairman, irrespective of the decision of the other members. ,

In such case the chairman shall enter or cause to be entered upon the minutes of the proceedings of the Board his reasons at length for determining such matter in opposition to the decision of the other members, and shall forward to the Minister a copy of such minute, certified under his hand.

The other members, or either of them, may also enter upon such minutes their or his reasons in support of the decision of such members and against the disapproval of the chairman, and may forward to the Minister a copy of such minute, certified under their hands.

. . . .

8. (1) A member of the Board may be suspended or removed for misbehaviour or incompetence, as follows:

a) a member of the Board may be suspended from his office by the Governor for misbehaviour or incompetence, but shall not be removed from office except as hereinafter provided. The Minister shall cause to be laid before Parliament a full statement of the grounds of suspension within seven days after such suspension if Parliament be in session and actually sitting, and when Parliament is not in session or not actually sitting within seven days after the commencement of the next session or sitting;

b) a member of the Board suspended under this section shall be restored to office unless each House of Parliament within twenty-one days from the time when such statement has been laid before it, declares by resolution that the said member ought to be removed from office, and if each House of Parliament within the said time does so declare, the said member shall be removed by the Governor accordingly.

(2) A member of the Board shall be deemed to have vacated his office if he—

a) engages in New South Wales during his term of office in any paid employment outside the duties of his office;

b) becomes bankrupt, compounds with his creditors, or makes an assignment of his salary for their benefit;

c) absents himself from duty for a period of fourteen consecutive days, except on leave granted by the Governor, or becomes incapable of performing his duties;

d) resigns his office, by writing under his hand, addressed to the Governor.

GENERAL POWERS AND DUTIES OF BOARD

9. (1) As often as necessary to carry out the directions and provisions of this Act, and ensure the establishment and continuance of a proper standard of efficiency and economy in the Public Service, the Board shall, as far as practicable, personally inspect each department, and investigate the character of the work performed by every officer therein, and the manner in which such officer has performed his duties, and the efficiency, economy, and general working of such department, both separately and in its relation to other departments, and may, for such purpose, examine the permanent head of such department and such other witnesses as may appear to the Board to be necessary.

(1*a*) The Governor may appoint persons to be Public Service inspectors who shall, when so directed by the Board and subject to such conditions and limitations as the Board may from time to time impose, have the powers and discharge the duties of the Board under the last preceding subsection.

(2) If the Board at any time finds that a greater number of persons is employed in any department than it determines to be necessary for the efficient working thereof, such persons as are in excess may (if practicable) be transferred to any other department which, in the opinion of the Board, requires additional assistance, and if the persons so found to be in excess cannot be usefully and profitably employed in any other department, their services shall be dispensed with subject to the provisions of section seventy-one hereof.

10. The Board, for the purpose of conducting any inquiry or investigation under this Act, shall have the same powers and authority to summon witnesses and receive evidence as are conferred by the Royal Commissions Act, 1923, on a commission, and the chairman shall have the powers of a chairman, within the meaning of Division 1 of Part II of the said Act; and the said Act, section thirteen and Division 2 of Part II excepted shall apply to witnesses so summoned, and evidence so received and given, as completely and effectually as if such witnesses had been summoned, and such evidence had been received or given, by virtue or under the authority of the said Act.

11. (1) For the purpose of conducting an inquiry or investigation under the authority of this Act, at which it may be inconvenient for all the members of the Board to be present, the Board may delegate any of its powers or functions to any one member of the Board, or, with the approval of the Governor, to any fit person or persons, but the decision of the case shall be determined by the Board.

(2) For the purpose of hearing any appeal under the authority of this

Act at which it may be inconvenient for all members of the Board to be present, the Board may delegate any of its powers or functions to any one member of the Board, and the decision of such member shall be final.

. . . .

12. The Board shall furnish to the Governor for presentation to Parliament at least once in each and every year a report on the condition and efficiency of the Public Service, and of its proceedings, and indicate the changes and measures necessary in its opinion for the improved working thereof, or of any department or subdivision thereof. The Board shall in such report draw attention to any breaches or evasions of this Act which may have come under notice.

GRADING AND SALARIES OF OFFICERS

13. The officers of the Public Service shall from time to time be graded and their work shall be classified within the five principal divisions specified in section twenty-one, according to fitness and to the character and importance of the work performed by or assigned to them.

14. (1) There shall from time to time be determined in accordance with the provisions of this Act what salary, fee, or allowance is fairly appropriate to the work to be performed by, or assigned to each officer or grade of officers, or to be performed by or assigned to persons temporarily employed, and the salary, fee, or allowance so determined shall, subject to the necessary provision being from time to time made therefor by Parliament, be the salary payable in respect of such work accordingly. After such provision has been made the officer or employee shall be entitled to sue for and recover the amount of his salary, fee, or allowance so determined.

(2) The Board shall on or before the thirtieth day of June in each year, or such later date as may be fixed by proclamation, prepare and submit to the Colonial Treasurer in the form prescribed a statement showing the total amount of the salaries payable under the determination of the Board, and such statement shall be laid before both Houses of Parliament.

14*a*. (1) The grades and salaries of officers, and the salaries of all other persons employed under the provisions of this Act, shall be determined from time to time in accordance with this section.

(2) The determination shall be made by the Board or by Salaries Committees.

(3) Each Salaries Committee shall consist of not less than three persons, who shall be appointed by the Board for the purpose.

At least one member of each Salaries Committee shall represent the officers or employees, and shall be selected as prescribed.

(4) In the case of officers and employees classified in the Special, Professional, and Clerical Divisions, the determination shall be made on or before the thirtieth day of June, one thousand nine hundred and twenty-nine, and thereafter on or before the thirtieth day of June in each second year.

(5) In the case of officers and employees classified in the Educational and General Divisions, the determination shall be made on or before the thirtieth day of June, one thousand nine hundred and thirty, and thereafter on or before the thirtieth day of June in each second year.

(6) The Board may vary any determination made by a Salaries Committee under this section.

14*b*. The Board may enter into an agreement with any association or organisation representing any group or class of officer or employee as to salaries, fees, allowances, and grades, and may by regulations prescribe the salaries, fees, allowances, and grades so agreed upon.

Every such agreement shall bind all officers or employees in any such class or group, and no officer or employee, whether a member of such association or organisation or not, shall have any right of appeal from the terms of such agreement.

. . . .

19. Any officer dissatisfied with any decision or determination of the Board either particular or general, in regard to salary, seniority or grade affecting him, or to the classification of the work performed by or assigned to him, may forward to the Board within thirty days after such decision or determination has been made or given a notice of appeal, setting forth the grounds of his dissatisfaction, and the Board shall thereupon consider such appeal and the grounds thereof, and any further evidence in relation thereto which the Board may deem necessary for the proper determination of such appeal, and may allow or disallow such appeal, and the decision of the Board thereon shall be final.

POWER TO MAKE REGULATIONS

20. (1) The Board may, in addition to the powers given in particular cases, make regulations for:

a) the arrangement of the Service in its prescribed divisions and the facilitation of the working thereof; the classification of the work therein; the grading of officers; the specification and assignment of work, duties, and offices; the determination of the order and conditions of promotion; the regulation of the transference or exchange of duties, work, or offices; appeals to the Board; the determination of amounts or rates of salary, wages, fee, or allowance appropriate to work, duties, or offices, or classes thereof; and the regulation of the payment of such salaries, wages, fees, or allowances;

b) regulating and determining the scale on which officers shall insure their lives, and other matters in connection with the carrying out of the provisions of section thirty-three hereof;

c) regulating and determining who are fit and proper persons to be employed in temporary employment, and for causing the names of such persons desiring employment to be enrolled in a register kept for that purpose;

d) regulating the hours of attendance and the conditions on which leave of absence may be granted, and the duration of such leave, subject to any rights already acquired under the Civil Service Act of 1884;

e) regulating the performance of and payment for extra service;

f) determining the dates, times, or periods of time at or within which shall be done all acts and things directed by this Act to be done, and in respect of which no dates, times, or periods of time may be herein specifically provided;

g) regulating the amount and nature of the security to be given for the fidelity of officers in those cases in which the Board may deem it to be necessary, and the nature and extent of any special allowances to be made to officers in respect of travelling and other necessary expenses; the increased cost of living in distant parts of the State or otherwise; generally for the maintenance of discipline, order, economy, and efficiency in the Service, and the carrying out of the objects and provisions of this Act;

h) determining the mode of procuring, keeping, and issuing stores or other material or requisites for the Public Service:

Provided always that the Governor may determine and carry out methods of procuring supplies for the Public Service other than by public tender, and independently of regulations framed by the Board.

i) facilitating and securing the better selection of suitable persons for appointment and promotion as officers belonging to the General Division employed in any department, and retaining the services of those of such persons as are found most fit;

j) providing for the services of those not so retained being either dispensed with or transferred to another department or branch of the Public Service as may be thought desirable; and

k) providing for the admission into the Public Service in special cases to be indicated in such regulations and upon such terms and conditions as may be therein prescribed.

(2) The Board may affix to breaches of any regulations under this Act, or prescribe for minor offences against discipline, a fine or penalty not exceeding fifty pounds, according to the nature and gravity of the offence.

(3) No regulations made hereunder shall in any manner alter or affect duties which by any Act now or hereafter to be in force are or may be required to be performed.

DIVISIONS OF PUBLIC SERVICE

21. The Public Service shall for the purposes of this Act consist of five principal divisions, that is to say:

The Special Division.
The Professional Division.
The Clerical Division.

The Educational Division.

The General Division.

22. (1) The Special Division shall include all officers whose offices the Governor, on the recommendation of the Board, and by notification in the *Gazette*, declares to belong to such division.

(2) The Board may, whenever it appears advantageous to the Public Service so to do, certify to the Governor that it is expedient to add any office to, or to abolish any office in the Special Division, and the Governor may upon such certificate, but not otherwise, add any office to the said Special Division, or abolish any office therein.

(3) Any person appointed to or holding any office so added to such Special Division shall thereupon be included in such division.

23. The Professional Division shall include all officers whose offices or duties in the opinion of the Board require in the persons holding or performing them some special skill or technical knowledge, usually acquired only in some profession or occupation different from the ordinary routine of the Civil Service.

24. The Clerical Division shall include all such officers as the Board from time to time directs to be included in such division.

25. The Educational Division shall include all officers in the Public Service employed in the work of public instruction under or in connection with the Department of Public Instruction.

26. The General Division shall include all officers in the Public Service not included in the Special, Professional, Clerical, or Educational Divisions.

26a. The officers of the Public Service shall from time to time be classified by the Board in the foregoing five divisions.

EXAMINATION AND APPOINTMENT OF OFFICERS

27. (1) The Board shall, subject to the approval of the Governor, make regulations for the competitive examination of persons desirous of admission into the Public Service, which shall prescribe—

a) a preliminary medical examination as to the health of the candidates;

b) the character and standard of the examinations or tests as to acquirements and efficiency to which candidates are required to submit themselves;

c) the times and places where the examinations shall be held, and the manner of holding the same;

d) a maximum and minimum age of candidates; and

e) the fee (not exceeding ten shillings) to be paid by candidates.

(2) For the purposes of this section the Board may from time to time appoint such persons as may be required to be examiners to conduct examinations in the prescribed manner. Each such person shall be appointed for a period not exceeding twelve months at any one time.

28. (1) No person shall be admitted to the Public Service unless he is a natural born or naturalised subject of His Majesty, and (except as hereinafter provided) unless he has successfully passed the examination prescribed.

(2) With the permission of the Governor a person not a natural born or naturalised subject of His Majesty may be so admitted. A person so admitted shall not, unless he is naturalised, be eligible for employment for more than six months after he becomes eligible for naturalisation.

(3) Candidates for employment in the General Division need not be required to pass any examination other than the medical examination.

29. Separate entrance examinations shall be held in connection with the Professional, Clerical, and Educational Divisions, and shall be designed to test the acquirements, fitness, and aptitude of candidates for employment in such divisions respectively.

30. The Board shall so arrange the times and places when and where candidates are to comply with the requirements of this Act, and present themselves for examination, that persons living in country districts shall have reasonable facility in the district in which they reside for competing for employment or passing such examinations without the necessity of attendance in Sydney.

31. The Board shall, from time to time, as additions to the Public Service are required, give public notice thereof three times in a Sydney daily paper, stating the division, grade, and salary, and the time and place of examination.

32. Unless the Board otherwise recommend every person admitted to the Public Service shall, in the first instance, be admitted on probation only, and may be continued in such probationary position for a period of not less than six months, or such longer period as the Board directs. After the period of such probation has expired, the Governor may, on the recommendation of the Board, based on inquiry and report, confirm such appointment or during or after such period may annul such appointment.

33. (1) No such appointment shall be confirmed until such probationer has effected with some life assurance company carrying on business in New South Wales an assurance on his life providing for the payment of a sum of money at his death, or at the age of sixty, whichever event first happens.

. . . .

34. (1) Subject to the provisions of section thirty-six hereof, no appointment of any person not already in the Service to any permanent office or position therein shall be made except—

a) at the instance of the Board; or

b) upon the written request of the permanent head of a department to the Minister, to be transmitted by the Minister to the Board; or

c) upon the written request of the Minister himself, addressed to the Board.

(2) No such appointment shall in any case be made except upon a certificate from the Board that such an appointment is required.

35. (1) The Board, in giving the certificate in the last section mentioned, shall in addition state therein—

a) the name of the person proposed to be appointed;

b) that there is no person in the Public Service fit or qualified and available for such appointment; and

c) that a competitive examination under the provisions of this Act has been held, and that the person named in the certificate is the most successful candidate; or

d) having regard to the nature of the appointment that examination is not required, or may be dispensed with under the provisions of this Act.

(2) The Governor may thereupon appoint the person named in such certificate, subject to the provisions of section thirty-two.

36. (1) If in any special case it is expedient or desirable in the interests of the Public Service to appoint to the Special, Professional, or Educational Division some person who is not then in the Service, the Governor on the recommendation of the Board may appoint such person accordingly without either examination or probation.

(2) No such appointment shall be made until the Board has reported whether in its opinion there is any person in the Service capable of filling and available for the position to which it is proposed that an appointment shall be made.

(3) All such reports shall be laid before Parliament.

. . . .

39. (1) No person shall be appointed to the Clerical Division of the Public Service whose age at his last birthday, previous to appointment, was less than fifteen or more than thirty-five years, unless such person is at the time of appointment already in the Public Service.

(2) No person shall be appointed to the General Division of the Public Service whose age at his last birthday, previous to appointment, was less than fifteen or (except as hereinafter provided) more than forty-five years, unless such person is at the time of his appointment already in the Public Service.

(3) In cases of special duties the Governor may, however, on the recommendation of the Board, extend the age from forty-five to fifty-five years.

(4) Nothing in this section contained shall be taken to prevent the appointment of persons of any age to be junior messengers.

40. No person related by blood or marriage to any member of the Board shall, except with the approval of the Governor in writing, be appointed to or promoted in the Public Service while the member of the Board to whom such person is so related continues to be a member of such Board:

Provided that the Governor may, by notification in the Gazette, define the limits or degrees of relationship within which this section shall apply.

41. The Board may make regulations for facilitating the employment of women in those departments or branches of the Public Service in which it may seem desirable to employ them; and such regulations may determine the

salary or wages to be paid to women employed on any particular work or class of work, and may provide generally for all matters relating to the examination of female candidates for employment, which may require special provision.

42. Except in the Department of Public Instruction no married woman shall be eligible for appointment to any office in the Public Service if her husband is already in the employment of the State, unless the Board certifies in each case that there are special circumstances which makes such appointment desirable.

43. (1) No person shall be permanently appointed to any office in any penal establishment or gaol or reformatory school, probationary school, or receiving depot, whether he is already an officer in the Public Service or not, unless and until he has served for twelve months on probation as an officer of some penal establishment or gaol or reformatory school, probationary school, or receiving depot.

(2) No person shall be permanently appointed to any office in any hospital for the insane, whether he is already an officer in the Public Service or not, unless and until he has served for twelve months on probation as an officer of some hospital or receiving house for insane.

TEMPORARY EMPLOYEES

44. (1) Whenever the prompt despatch of the business of any department renders temporary assistance necessary, and the Board is unable to provide such assistance from other departments, the Board shall select from the persons whose names are upon the register referred to in paragraph (c) of subsection one of section twenty, such person or persons as to the Board appear best qualified for such work.

(2) Such person or persons may be employed to perform such work for any period not exceeding four months, and, if necessary, may, with the sanction of the Board, be employed at the end of such period for any further periods not exceeding four months each if the Board, after investigation, certify that it would be in the public interest that such person should be so further retained.

(3) The services of any person employed temporarily may be dispensed with at any time by the Board or by the permanent head, subject to confirmation by the Board.

. . . .

INTERNAL ADMINISTRATION—PROMOTIONS, &C.

47. All promotions in and appointments to the Special Division shall, as far as practicable, and subject to the provisions of this Act, be from such Special Division, or from the higher grades of the Professional or Clerical Divisions, or from the Educational Division, and shall be made with regard to special qualifications and aptitude, as well as to seniority in grade or dura-

tion of service, seniority being subordinated to considerations of special fitness.

48. There shall be two series of grades in the Professional and Clerical Divisions, called the higher and the lower grades, and all officers engaged in the performance of work entitling them to a salary of four hundred and fifty pounds per annum and upwards shall be deemed to be included in the higher grades of such divisions, and all officers engaged in the performance of work entitling them to a salary of less than three hundred and ninety-nine pounds per annum shall be deemed to be included in the lower grades of such divisions respectively.

49. (1) Whenever any vacancy occurs in any office or class of work within the Special Division or the higher and lower grades, respectively, of the Professional or Clerical, or in the Educational or the General Division, if it is expedient to fill such vacancy, the Governor may, upon the recommendation of the Board, appoint—

a) any officer of the department in which such vacancy occurs (regard being had to the relative seniority and fitness respectively of the officers of such department). In all cases, seniority shall be subordinated to considerations of special fitness; or

b) any officer from any other department whom (on the ground of seniority combined with fitness) it appears desirable so to appoint.

(2) "Fitness" in this section means special qualifications and aptitude for the discharge of the duties of the office to be filled.

(3) All promotions or appointments under this section shall, as far as practicable, and subject to the provisions of this Act, be from the same grade as that in which the vacancy occurs, or from the immediately inferior grade in the same series of grades or division, or from equivalent grades in some other division, so that such promotions or appointments are from a junior to a senior position in the same grade, or from an inferior to an immediately superior grade, in the same or a corresponding series of grades.

49*a*. (1) When a recommendation is made to the Board for the promotion to a permanent position in a department of an officer other than the officer of that department who is next in order of seniority for such promotion, the Board shall refer such recommendation to a promotions committee which shall be constituted for the purpose by the Board.

(2) Unless the Board considers it desirable a reference to a promotions committee shall not be made when the salary attached to the position to be filled exceeds seven hundred and fifty pounds per annum.

(3) A promotions committee shall consist of—

a) The permanent head of the department in which the proposed promotion is to be made, or an officer nominated by him;

b) an officers' respresentative who shall be an officer of the division in which the position to be filled is classified, and who shall be selected by or on behalf of the employees of that division in the manner prescribed;

c) an officer to be nominated by the other members of the committee or (failing agreement by them) by the Board.

(4) The committee shall inquire into the claims to the promotion in question of all officers proposed to be passed over, and shall report to the Board their opinion or opinions thereon.

(5) The Board shall take such report into consideration before arriving at its decision, and, if so desired by the officers' representative, shall hear him in support of the claims of any officer whose seniority may be adversely affected by the promotion recommended.

(6) The Board may make regulations to give effect to the provisions of this section.

50. (1) No person entering the Service on or after the twenty-third day of December, one thousand eight hundred and ninety-five, shall be eligible for promotion from the lower to the higher grades of the Professional and Clerical Divisions unless he has passed the examination prescribed by the Board as preliminary to admission to those grades.

(2) The Board shall, from time to time as may appear necessary, cause examinations for promotions from the lower to the higher grades in the Professional and Clerical Divisions, to be held by the examiners appointed under the provisions of section twenty-seven, which examinations shall be open to all officers employed in the lower grades of the Professional and Clerical Divisions, who, at the date on which they present themselves for examination, have been at least three years in the Public Service, and the names of the persons who have passed the required standard of examination shall be registered by the Board, and all vacancies in the higher series of grades in the two divisions mentioned which it may be considered expedient to fill, and which subject to the provisions of this Act may be filled from a lower series of grades shall be filled by the appointment of those officers whose names appear in the register aforesaid.

51. The Board may, in any case, allow any officer to decline any offered promotion or appointment without prejudice to his right to any future promotion or appointment to which his grade and order of seniority and merit would, under the provisions of this Act, entitle him; but no officer shall be allowed to refuse compliance with any order of the Board, directing his removal from one position to another, or from one division or department to another, and disregard of, or disobedience to, any such order shall be followed by dismissal, unless the officer concerned justifies such refusal, in the judgment of the Board, by adducing some valid and sufficient reason therefor.

52. When it appears to the Minister or permanent head of any department necessary or expedient for the mere economic, efficient, or convenient working of such department, or any branch thereof, that any particular disposition of officers and rearrangement of work should be effected, the matter shall be referred to the Board for consideration and action:

Provided that nothing in this Act contained shall be construed as restricting the ordinary and necessary departmental authority of such Minister or permanent head of the department with respect to the direction and control of officers and work.

53. Any power of appointment, dismissal, or control of officers conferred upon the Minister, or upon the Minister with the approval of the Governor, or conferred upon the Governor alone under the provisions of the Public Instruction Act of 1880, shall be exercised by the Governor upon the recommendation of the Board, in accordance with the provisions of this Act, and not otherwise, and all officers or persons employed under the provisions of that Act shall be deemed to be under the control of the Board for the same purposes and to the same extent as the other branches of the Public Service to which this Act applies.

54. All regulations made under the provisions of the Public Instruction Act of 1880, having reference to the officers and persons employed thereunder shall, so far as the Board considers them applicable and consistent with the provisions of this Act, be applied by the Board in the exercise of their powers, duties, and functions under this Act in the organisation and administration of that branch of the Public Service.

55. The Board shall have power to make regulations:

a) prescribing the nature and standard of the examinations to be held for admission to or promotions or appointments within the Educational Division;

b) prescribing and defining such subdivisions of the Educational Division as may be necessary to facilitate the application of the provisions of this Act to the organisation and administration of that branch of the Public Service;

c) for determining the relative positions in order of precedence of teachers in each grade;

d) providing for increased scale of salary or allowance, without reference to grade, in special cases;

e) providing for appeals to the Board from decisions of the Board concerning salary, grading, or classification of duty or work;

f) providing for penalties and fines for minor offences against discipline or order, or for breaches of the regulations;

g) for other matters and things in connection with the above or similar objects.

DISMISSALS, REMOVALS, &C.

56. (1) If any officer permanently employed in the Public Service—

a) is guilty of any breach of the provisions of this Act, or the regulations made thereunder; or

b) [Repealed]

c) is guilty of any misconduct; or

d) is guilty of habitually using intoxicating beverages to excess; or *e*) is guilty of any wilful disobedience or disregard of any lawful order made or given by any person having authority to give such order; or

f) is negligent or careless in the discharge of his duties; or

g) is inefficient or incompetent; or

h) is guilty of any disgraceful or improper conduct, he shall be liable to dismissal or such other punishment as may be determined upon under the provisions of this section.

(2) Any officer, not being an officer included in the Special Division, charged with the commission of any such offence, may be dealt with in one of the modes following:

a) in emergent cases he may be temporarily suspended by the senior officer of the branch in which the offending officer is employed; but such suspension shall be immediately reported to the permanent head of the department;

b) the permanent head, if he is of opinion, after hearing such officer in his defence, that the alleged offence has been committed, but is not of so serious a nature that a report thereof should in the course of his duty be made to the Board, may reprimand or caution such officer only, and thereupon remove the suspension;

c) the permanent head may, if he considers the offence is of so serious a nature that a report thereof should in the course of his duty be made to the Board, suspend such officer and forthwith report him to the Board, and if such officer does not in writing admit the truth of the charges made against him, the Board shall summon the officer concerned before it and shall inquire as to the truth of such charges, or if the Board is of opinion that it is desirable that any such charges should be inquired into by some person specially appointed for the purpose, it may appoint an officer of the Public Service, or, with the approval of the Governor, some other person or persons to inquire as to the truth of such charges. Any such person or persons so appointed for such purpose shall have the same powers as the Board to summon and examine upon oath any witnesses whose evidence may be necessary or material, and shall, after fully hearing the case, report to the Board their opinion thereon;

d) if any such charges are admitted as aforesaid, or are found by the Board or by the person or persons appointed as aforesaid to be proved, the Board may, according to the nature of the offence, impose one or more of the following punishments, namely: reduce such officer to a lower grade in the Public Service, or to a lower salary, or fine him, or deprive him of his leave of absence during such time as the Board thinks fit, or with the approval of the Governor may dismiss such officer from the Public Service or require him to resign, and unless the Board otherwise orders, such officer shall forfeit all salary or wages except such as may have been due before his suspension;

e) if such charges are found by the Board or by persons appointed as aforesaid not to be proved the suspension shall be immediately removed.

57. If any officer in the Special Division is charged with any of the offences enumerated in section fifty-six, the Minister may suspend such officer and report the charge and suspension to the Board, and thereupon the Board shall inquire into the truth of the charge and deal with the matter in the manner provided in subsections (*c*), (*d*), and (*e*) of section fifty-six.

58. (1) If it comes to the knowledge of the Board that any officer is alleged to have been guilty of any of the offences specified in section fifty-six, the Board may deal with the matter in one of the modes following:

a) The Board may initiate an inquiry into the case and for that purpose shall inform the officer of the charge against him, and receive evidence thereon, and in all other respects deal with the charge as though it had arisen under the provisions of either section fifty-six or section fifty-seven; or

b) The Board may suspend such officer, and in all other respects deal with the charge as though the officer concerned had been suspended by the permanent head or the Minister under the provisions of section fifty-six or section fifty-seven.

59. In the event of the address for the time being of any officer being unknown to the Board, all notices, orders, or communications relative to any charges against such officer shall be posted to the last-known address of such officer, and compliance with this section shall be deemed a sufficient service on such officer of any such notice or order: Provided that if within any time specified in such notice, order, or communication, no answer is received by the Board to an inquiry asking whether the officer admits the truth of any charges brought against him, he shall be deemed to deny the truth of such charges, and the Board may inquire into and deal with such charges in the absence of the officer affected.

60. Neither officers nor departments shall be entitled to be represented by counsel, attorney, or agent at inquiries held by the Board except such as are held under the provisions of section fifty-six and fifty-eight of this Act. The Board or any persons appointed under the authority of section eleven or paragraph (*c*) of subsection two of section fifty-six may conduct any inquiry or investigation under this Act without regard to legal forms, and shall direct itself or themselves by the best evidence it or they can procure, or that is laid before it or them, whether the same be such evidence as the law would require or admit in other cases or not, and the Board, or such persons (as the case may be), may receive or reject as it or they deem fit any evidence that may be tendered. The Board shall keep a complete record of all such inquiries which shall afterwards be available for reference.

61. (1) If any officer is convicted of any felony or other infamous offence he shall be summarily dismissed.

(2) If he becomes bankrupt or applies to take the benefit of any Act

now or hereafter in force for the relief of insolvent debtors, or makes an assignment for the benefit of his creditors, he shall be deemed to have committed an offence within the meaning of this Act, and his services shall thereupon be dispensed with, unless he prove to the satisfaction of the Board that his pecuniary embarrassment has not been caused or attended by any fraud, extravagance, or dishonorable conduct.

62. Where, on the twenty-third day of December, one thousand eight hundred and ninety-five, any Act or the regulations under any Act other than the Civil Service Act of 1884, specifically imposed or conferred upon any officer in the Public Service, any duty, power, or authority to be exercised in connection with any department of the Service, such duty, power, or authority, and any obligation or right to exercise the same, shall remain unaffected by this Act, except in so far as such duty, power, or authority relates to the classification, salary, and allowances of officers or persons employed in the Public Service.

63. If any officer in the Public Service is at any time found unfit to discharge or incapable of discharging the duties of his office, and such unfitness or incapacity appears likely to be of a permanent character, and has not arisen from actual misconduct on his part, or from causes within his own control, the Governor may, on the recommendation of the Board, cause the retirement of such officer, and may direct that compensation be granted to him in terms of section seventy-one hereof.

64. The Paying Officer on receiving notice of any pecuniary penalty imposed upon any officer under the authority of this Act shall deduct the amount thereof from the salary of the officer incurring such penalty.

65. Nothing in this Act, or in the Civil Service Act of 1884, shall be construed or held to abrogate or restrict the right or power of the Crown, as it existed before the passing of the said Civil Service Act, to dispense with the services of any person employed in the Public Service.

RETIRING AGE OF OFFICERS

66. (1) Every officer in the Public Service, whether appointed before or after the commencement of this Act, and whether he have attained the age of sixty years before or after the commencement of this Act, shall be entitled, if he desires so to do, having attained the age of sixty years, to retire from the Public Service.

(2) Any such officer may (unless called upon to retire as hereinafter provided) continue in the Public Service until he attains the age of sixty-five years.

(3) If any such officer continues in the Public Service after he has attained the age of sixty years, he may at any time before he attain the age of sixty-five years be called upon by the Governor, acting upon the recommendation of the Board, to retire; and every such officer so called upon to retire shall retire accordingly.

67. (1) Every officer, whether appointed before or after the commencement of this Act, if he attains the age of sixty-five years after the commencement of this Act, shall retire immediately on attaining that age, unless he is required, notwithstanding his age, to continue to perform his duty in the Public Service as hereinafter provided, and is willing so to do.

(2) The Governor may, notwithstanding that any officer has attained the age of sixty-five years (if the Board certify that in the interests of the Public Service it is desirable that such officer shall continue in the performance of the duties of his office, or of any office in the Public Service to which he may be appointed, and if such officer be able and willing to do so), from time to time direct such officer to continue in the Service for such fixed time not exceeding twelve months (as the Governor in each case directs), or during pleasure.

(3) Every officer who retires under the provisions of this or the last preceding section, and is not a contributor to the Civil Service Superannuation Account, shall, if otherwise within the provisions of subclause (*b*) of section seventy-one be entitled to receive, on such retirement, the gratuity or allowance thereby specified.

PRIVATE EMPLOYMENT OF OFFICERS

68. (1) Except with the express permission of the Governor signified by notice published in the *Gazette*, which permission may be at any time withdrawn, no officer shall—

a) accept or continue to hold or discharge the duties of or be employed in any paid office in connection with banking, insurance, mining, mercantile, or other commercial business, whether the same be carried on by any corporation, company, firm, or individual; nor

b) engage in or undertake any such business, whether as principal or agent; nor

c) engage in or continue in the private practice of any profession.

(2) If any officer is the holder of any office, or is engaged in any employment whatsoever other than in connection with the duties of his office under the Crown, he shall at once notify the fact to the Board who may require such officer to resign such office or abstain from engaging in such employment.

(3) [Repealed]

(4) Any officer failing to comply with the requirement of the Board shall be deemed guilty of misconduct within the meaning of section fifty-six hereof.

(5) Nothing herein contained shall prevent any officer from accepting and continuing to hold any office in any society founded under the law relating to Friendly Societies for the benefit of public servants only.

THE CIVIL SERVICE OF THE UNITED STATES OF AMERICA

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INTRODUCTION

Legislation attempting to improve the civil service of the federal government of the United States dates back to 1853. A system of pass examinations was inaugurated resembling the similar system incorporated in the British Order in Council of 1855. Departmental clerks were divided into four classes, and no person was to be appointed to any of these classes "until he has been examined and found qualified by a board of three examiners, to consist of the chief of the Bureau . . . . and two other clerks to be selected by the head of the Department."[1] After a few years, this law was quietly ignored by the bureaus, and eventually forgotten.

In 1871 Congress authorized the president to prescribe rules and regulations for admission to the civil service, and to appoint suitable persons to ascertain the fitness of candidates in respect to age, health, character, knowledge, and ability.[2] President Grant appointed a civil service commission, but at the expiration of two years Congress refused further appropriations and the commission expired.

The law of 1883 (the Pendleton Act) remains today the fundamental legislation governing the civil service. It has never been formally amended, although a considerable number of supplementary statutes have modified it. The law established a civil service commission, authorized it to make rules and regulations, imposed certain restrictions on political activity of civil servants, and authorized the president to extend the scope of the law from time to time.[3]

With rare exceptions, the vast extension of the merit system in the federal government has come by means of executive orders. After several years of unregulated appointment, Congress recently directed the employees of the prohibition unit

[1] Revised Statutes, Sec. 163, 164.

[2] Revised Statutes, Sec. 1753; U.S. Code, Title V, Sec. 631.

[3] U.S. Code, Title V, Sec. 632 ff.

to be selected by merit principles. On the other hand, Congress has never been willing to extend the merit system to those officers constitutionally appointed by the president, with the advice and consent of the Senate. These include not only such positions as secretaries of departments and assistant secretaries, members of various commissions such as the Interstate Commerce Commission, the Federal Reserve Board, and the Federal Trade Commission, but also a large number of officials such as collectors of customs, assistant attorney-generals, internal revenue collectors, marshals and deputy marshals, and postmasters. They remain subject to political appointment. A special system of appointment and management prevails in the foreign service.[1]

The merit system of the federal government now includes more than 425,000 men and women out of a total employment roll of about 580,000. To regulate the federal service a number of supplementary statutes have been enacted. An important statute in 1912 determined the method of removal from a classified position and gave some protection against unwarranted removal. This statute also for the first time gave a certain degree of recognition to associations of civil servants by forbidding removal for membership in associations of a definite type.

In 1919 provision was made by law to safeguard the position of veterans of the World War who had been former civil servants. The rules and regulations of the civil service commission describe more exactly the provisions made in favor of the veteran.

In this year, also, Congress took means to protect itself against pressure from the administrative departments. This legislation has been only partly successful.

The Classification Act of 1923 marks a very important step toward the improvement of the civil service. Its purpose was primarily to lay the foundation for sound wage and salary policies by classifying each of the 96,000 positions at Washington into accurately described categories. The personnel classification board was established to execute this huge task, and after some delay has substantially completed its work. It is now being extended to include a large part of the field service under the terms of legislation of 1928.

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[1] Act of May 24, 1924, 43 Stat. L. 140; U.S. Code, Title 22.

The civil service commission has never assumed the power given it by the legislation of 1883 to prescribe promotional examinations. Each department promotes as it sees fit.

Legislation with regard to the right to strike is incomplete. The federal service has never been subject to disturbances of this sort, although some municipal services have experienced strikes of their employees.

American legislation has not concerned itself with structures like the Whitley Council of Great Britain, the arbitration machinery of Australia, or the jurisdictional protection against removal as in France.

For lack of space no attention is given to the laws and regulations governing the public service of the respective states. Ten of these states, including Massachusetts, New York, New Jersey, Maryland, Ohio, Illinois, Wisconsin, Nebraska, Colorado, and California, have civil service commissions and in some cases a highly developed system of laws and regulations. These laws are quite independent of federal legislation. Many American cities also have a more or less elaborate personnel system.

The following documents are taken from the *Civil Service Act and Rules* published by the civil service commission, and preserve the same order. They include (1) the Pendleton Act of 1883, (2) other statutes affecting the civil service, directory and prohibitory, (3) excerpts from the Classification Act of 1923, (4) rules and regulations of the civil service commission. Material of secondary importance has been eliminated in each case. Pension legislation is omitted.

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DOCUMENT NO. 1

CIVIL SERVICE ACT

An act to regulate and improve the civil service of the United States. (Act of Jan. 16, 1883, 22 Stat., 403)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President is authorized to appoint, by and with the advice and consent of the Senate three persons, not more than two of whom shall be adherents of the same party, as Civil Service Commissioners, and said three commissioners shall constitute the United States Civil Service Commission. Said commissioners shall hold no other official place under the United States.

The President may remove any commissioner; and any vacancy in the position of commissioner shall be so filled by the President, by and with the advice and consent of the Senate, as to conform to said conditions for the first selection of commissioners.

The commissioners shall each receive a salary of three thousand five hundred dollars a year.[1] And each of said commissioners shall be paid his necessary traveling expenses incurred in the discharge of his duty as a commissioner.

Sec. 2. That it shall be the duty of said commissioners: *First*, To aid the President, as he may request, in preparing suitable rules for carrying this act into effect, and when said rules shall have been promulgated it shall be the duty of all officers of the United States in the departments and offices to which any such rules may relate to aid, in all proper ways, in carrying said rules, and any modifications thereof, into effect.

Second. And among other things, said rules shall provide and declare, as nearly as the conditions of good administration will warrant, as follows:

First, for open, competitive examinations for testing the fitness of applicants for the public service now classified or to be classified hereunder. Such examinations shall be practical in their character, and so far as may be shall relate to those matters which will fairly test the relative capacity and fitness of the persons examined to discharge the duties of the service into which they seek to be appointed.

Second, that all the offices, places, and employments so arranged or to be arranged in classes shall be filled by selections according to grade from among those graded highest as the results of such competitive examinations.

Third, appointments to the public service aforesaid in the departments at

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[1] Salary of commissioners fixed.—The salary of the commissioners is fixed at $7,500 per annum by act of Congress approved Feb. 11, 1927.

Washington shall be apportioned among the several States and Territories and the District of Columbia upon the basis of population as ascertained at the last preceding census. Every application for an examination shall contain, among other things, a statement, under oath, setting forth his or her actual bona fide residence at the time of making the application, as well as how long he or she has been resident of such place.

Fourth, that there shall be a period of probation before any absolute appointment or employment aforesaid.

Fifth, that no person in the public service is for that reason under any obligations to contribute to any political fund, or to render any political service, and that he will not be removed or otherwise prejudiced for refusing to do so.

Sixth, that no person in said service has any right to use his official authority or influence to coerce the political action of any person or body.

Seventh, there shall be noncompetitive examinations in all proper cases before the commission, when competent persons do not compete, after notice has been given of the existence of the vacancy, under such rules as may be prescribed by the commissioners as to the manner of giving notice.

Eighth, that notice shall be given in writing by the appointing power to said commission of the persons selected for appointment or employment from among those who have been examined, of the place of residence of such persons, of the rejection of any such persons after probation, of transfers, resignations, and removals, and of the date thereof, and a record of the same shall be kept by said commission.

And any necessary exceptions from said eight fundamental provisions of the rules shall be set forth in connection with such rules, and the reasons therefor shall be stated in the annual reports of the commission.

Third. Said commission shall, subject to the rules that may be made by the President, make regulations for, and have control of, such examinations, and, through its members or the examiners, it shall supervise and preserve the records of the same; and said commission shall keep minutes of its own proceedings.

Fourth. Said commission may make investigations concerning the facts, and may report upon all matters touching the enforcement and effect of said rules and regulations, and concerning the action of any examiner or board of examiners hereinafter provided for, and its own subordinates, and those in the public service, in respect to the execution of this act.

Fifth. Said commission shall make an annual report to the President for transmission to Congress, showing its own action, the rules and regulations, and the exceptions thereto in force, the practical effect thereof, and any suggestions it may approve for the more effectual accomplishment of the purposes of this act.

Sec. 3. That said commission is authorized to employ a chief examiner, a part of whose duty it shall be, under its direction, to act with the examining boards, so far as practicable, whether at Washington or elsewhere, and to secure accuracy, uniformity, and justice in all their proceedings, which shall be at all times open to him. The chief examiner shall be entitled to receive a salary at the rate of three thousand dollars a year, and he shall be paid his necessary traveling expenses incurred in the discharge of his duty. The commission shall have a secretary, to be appointed by the President. . . . . The commission shall, at Washington, and in one or more places in each State and Territory where examinations are to take place, designate and select a suitable number of persons, not less than three, in the official service of the United States, residing in said State or Territory, after consulting the head of the department or office in which such persons serve, to be members of boards of examiners, and may at any time substitute any other person in said service living in such State or Territory in the place of anyone so selected. Such boards of examiners shall be so located as to make it reasonably convenient and inexpensive for applicants to attend before them; and where there are persons to be examined in any State or Territory, examinations shall be held therein at least twice in each year. It shall be the duty of the collector, postmaster, and other officers of the United States, at any place outside of the District of Columbia where examinations are directed by the President or by said board to be held, to allow the reasonable use of the public buildings for holding such examinations and in all proper ways to facilitate the same.

Sec. 4. [Quarters.]

Sec. 5. That any said commissioner, examiner, copyist, or messenger, or any person in the public service who shall willfully and corruptly, by himself or in cooperation with one or more other persons, defeat, deceive, or obstruct any person in respect or his of her right of examination according to any such rules or regulations, or who shall willfully, corruptly, and falsely mark, grade, estimate, or report upon the examination or proper standing of any person examined hereunder, or aid in so doing, or who shall willfully and corruptly make any false representations concerning the same or concerning the person examined, or who shall willfully and corruptly furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person so examined or to be examined, being appointed, employed, or promoted, shall for each such offense be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine of not less than one hundred dollars, nor more than one thousand dollars, or by imprisonment not less than ten days nor more than one year, or by both such fine and imprisonment.

Sec. 6. [Classification provisions, superseded.]

Sec. 7. That after the expiration of six months from the passage of this act no officer or clerk shall be appointed, and no person shall be employed to enter or be promoted in either of the said classes now existing, or that may be arranged hereunder pursuant to said rules, until he has passed an examination, or is shown to be specially exempted from such examination in conformity herewith. But nothing herein contained shall be construed to take from those honorably discharged from the military or naval service any preference conferred by the seventeen hundred and fifty-fourth section of the Revised Statutes, nor to take from the President any authority not inconsistent with this act conferred by the seventeen hundred and fifty-third section of said statutes; nor shall any officer not in the executive branch of the Government, or any person merely employed as a laborer or workman, be required to be classified hereunder; nor, unless by direction of the Senate, shall any person who has been nominated for confirmation by the Senate be required to be classified or to pass an examination.

SEC. 8. That no person habitually using intoxicating beverages to excess shall be appointed to, or retained in, any office, appointment, or employment to which the provisions of this act are applicable.

SEC. 9. That whenever there are already two or more members of a family in the public service in the grades covered by this act, no other member of such family shall be eligible to appointment to any of said grades.

SEC. 10. That no recommendation of any person who shall apply for office or place under the provisions of this act which may be given by any Senator or Member of the House of Representatives, except as to the character or residence of the applicant, shall be received or considered by any person concerned in making any examination or appointment under this act.

SEC. 11. It is unlawful for any Senator or Representative in, or Delegate or Resident Commissioner to, Congress, or any candidate for, or individual elected as, Senator, Representative, Delegate, or Resident Commissioner, or any officer or employee of the United States, or any person receiving any salary or compensation for services from money derived from the Treasury of the United States, to directly or indirectly solicit, receive, or be in any manner concerned in soliciting or receiving, any assessment, subscription, or contribution for any political purpose whatever, from any other such officer, employee, or person. (43 Stat. 1073)[1]

SEC. 12. That no person shall, in any room or building occupied in the discharge of official duties by any officer or employee of the United States mentioned in this act, or in any navy yard, fort, or arsenal, solicit in any manner whatever, or receive any contribution of money or any other thing of value for any political purpose whatever.

SEC. 13. No officer or employee of the United States mentioned in this act shall discharge, or promote, or degrade, or in any manner change the official rank or compensation of any other officer or employee, or promise or threaten so to do, for giving or withholding or neglecting to make any contribution of money or other valuable thing for any political purpose.

SEC. 14. That no officer, clerk, or other person in the service of the United States shall, directly or indirectly, give or hand over to any other officer, clerk, or person in the service of the United States, or to any Senator or Member of the House of Representatives, or Territorial Delegate, any money or other valuable thing on account of or to be applied to the promotion of any political object whatver.

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[1] Secs. 11 to 15, inclusive, are now embodied in secs. 118 to 122, inclusive, of the Criminal Code.

SEC. 15. That any person who shall be guilty of violating any provision of the four foregoing sections shall be deemed guilty of a misdemeanor, and shall, on conviction thereof, be punished by a fine not exceeding five thousand dollars, or by imprisonment for a term not exceeding three years or by such fine and imprisonment both, in the discretion of the court.

DOCUMENT NO. 2

STATUTES AFFECTING THE CLASSIFIED SERVICE

DIRECTORY STATUTES

Sec. 1753. The President is authorized to prescribe such regulations for the admission of persons into the civil service of the United States as may best promote the efficiency thereof, and ascertain the fitness of each candidate in respect to age, health, character, knowledge, and ability for the branch of service into which he seeks to enter; and for this purpose he may employ suitable persons to conduct such inquiries, and may prescribe their duties, and establish regulations for the conduct of persons who may receive appointments in the civil service. (R.S. 312, Mar. 3, 1871.)

Sec. 161. The head of each department is authorized to prescribe regulations, not inconsistent with law, for the government of his department, the conduct of its officers and clerks, the distribution and performance of its business, and the custody, use, and preservation of the records, papers, and property appertaining to it. (R. S. 26, Aug. 15, 1876.)

Sec. 165. Women may, in the discretion of the head of any department, be appointed to any of the clerkships therein authorized by law, upon the same requisites and conditions, and with the same compensation, as are prescribed for men. (R. S. 27, July 12, 1870.)

That in making any reduction of force in any of the executive departments the head of such department shall retain those persons who may be equally qualified who have been honorably discharged from the military or naval service of the United States and the widows and orphans of deceased soldiers and sailors. (19 Stat. 169, Aug. 15, 1876.)

All former Government employees who have entered the military or naval service of the United States in the war with the German Government shall be reinstated on application to their former positions if they have received an honorable discharge and are qualified to perform the duties of the position. (41 Stat. 142, July 11, 1919.)

Sec. 7. . . . . *Provided further*, That hereafter all examinations of applicants for positions in the Government service, from any State or Territory, shall be had in the State or Territory in which such applicant resides, and no person shall be eligible for such examination or appointment unless he or she shall have been actually domiciled in such State or Territory for at least one year previous to such examination: *Provided further*, That the Civil Service Commission shall hold examinations of applicants temporarily absent from the places of their legal residence or domicile in the District of Columbia and elsewhere in the United States where examinations are usually held, upon proof satisfactory to the commission that such applicants are bona fide residents of the States or Territories in which such applicants claim to have legal residence or domicile: *Provided further*, That nothing herein shall be construed as to abridge the existing law of apportionment or change the requirements of existing law as to legal residence or domicile of such applicants. (40 Stat. 1293, Mar. 3, 1919.)

SEC. 1. That each individual hereafter appointed as a civil officer of the United States by the President, by and with the advice and consent of the Senate, or by the President alone, or by a court of law, or by the head of a department, shall, within thirty days after the effective date of his appointment, file with the Comptroller General of the United States an affidavit stating that neither he nor any one acting in his behalf has given, transferred, promised, or paid any consideration for or in the expectation or hope of receiving assistance in securing such appointment.

SEC. 2. No salary shall be paid to any individual required under section 1 to file an affidavit until such affidavit has been filed.

SEC. 5. . . . . (*b*) The Commissioner of Prohibition, with the approval of the Secretary of the Treasury, is authorized to appoint in the Bureau of Prohibition such employees in the field service as he may deem necessary, but all appointments of such employees shall be made subject to the provisions of the civil service laws, notwithstanding the provisions of section 38 of the National Prohibition Act, as amended. The term of office of any person who is transferred, under this section, to the Bureau of Prohibition, and who was not appointed subject to the provisions of the civil service laws, shall expire upon the expiration of six months from the effective date of this act. . . . . (Act of Mar. 3, 1927.)

PROHIBITORY STATUTES

Hereafter no department or officer of the United States shall accept voluntary service for the Government or employ personal service in excess of that authorized by law except in cases of sudden emergency involving the loss of human life or the destruction of property. (23 Stat. 17, May 1, 1884; sec. 3679, R. S.)

SEC. 7. No part of any money contained herein or hereafter appropriated in lump sum shall be available for the payment of personal services at a rate of compensation in excess of that paid for the same or similar services during the preceding fiscal year; nor shall any person employed at a specific salary be hereafter transferred and hereafter paid from a lump-sum appropriation at a rate of compensation greater than such specific salary, and the heads of departments shall cause this provision to be enforced: *Provided*, That this section shall not apply to mechanics, artisans, their helpers and assistants, laborers, or any other employees, whose duties are of similar character and required in carrying on the various manufacturing or constructing operations of the Government. (37 Stat. 626, Aug. 26, 1912, as amended by 37 Stat. 790, Mar. 4, 1913.)

Sec. 6. That hereafter no part of the money appropriated by this or any other act shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation; but this shall not prevent officers and employees of the United States from communicating to Members of Congress on the request of any Member or to Congress through the proper official channels, requests for legislation or appropriations which they deem necessary for the efficient conduct of the public business.

Any officer or employee of the United States who, after notice and hearing by the superior officer vested with the power of removing him, is found to have violated or attempted to violate this section, shall be removed by such superior officer from office or employment. Any officer or employee of the United States who violates or attempts to violate this section shall also be guilty of a misdemeanor and on conviction thereof shall be punished by a fine of not more than $500 or by imprisonment for not more than one year, or both. (41 Stat. 68, July 11, 1919.)

No money appropriated by this or any other act shall be used for the compensation of any publicity expert unless specifically appropriated for that purpose. (38 Stat. 212, Oct. 22, 1913.)

Sec. 2. No person who holds an office the salary or annual compensation attached to which amounts to the sum of two thousand five hundred dollars shall be appointed to or hold any other office to which compensation is attached unless specially heretofore or hereafter specially authorized thereto by law; but this shall not apply to retired officers of the Army or Navy whenever they may be elected to public office or whenever the President shall appoint them to office, by and with the advice and consent of the Senate. (28 Stat. 205, July 31, 1894.) *See* modifications in acts of Aug. 29, 1916, and May 31, 1924, which follow.

Sec. 6. That unless otherwise specially authorized by law, no money appropriated by this or any other act shall be available for payment to any person receiving more than one salary when the combined amount of said salaries exceeds the sum of $2,000 per annum, but this shall not apply to retired or enlisted men of the Army, Navy, Marine Corps, or Coast Guard; or to officers and enlisted men of the Organized Militia and Naval Militia in the several States, Territories, and the District of Columbia: *Provided*, That no such retired officer, officer, or enlisted man shall be denied or deprived of any of his pay, salary, or compensation as such, or of any other salary or compensation for services heretofore rendered, by reason of any decision or construction of said section 6. (39 Stat. 582, Aug. 29, 1916.)

SEC. 6. That no person in the classified civil service of the United States shall be removed therefrom except for such cause as will promote the efficiency of said service and for reasons given in writing, and the person whose removal is sought shall have notice of the same and of any charges preferred against him, and be furnished with a copy thereof, and also be allowed a reasonable time for personally answering the same in writing and affidavits in support thereof; but no examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer making the removal; and copies of charges, notice of hearing, answer, reasons for removal, and of the order of removal shall be made a part of the records of the proper department or office, as shall also the reasons for reduction in rank or compensation; and copies of the same shall be furnished to the person affected upon request, and the Civil Service Commission also shall, upon request, be furnished copies of the same: *Provided, however*, That membership in any society, association, club, or other form of organization of postal employees not affiliated with any outside organization imposing an obligation or duty upon them to engage in any strike, or proposing to assist them in any strike, against the United States, having for its objects among other things, improvements in the condition of labor of its members, including hours of labor and compensation therefor and leave of absence, by any person or groups of persons in said Postal Service, or the presenting by any such person or groups of persons of any grievance and grievances to the Congress or any Member thereof, shall not constitute or be cause for reduction in rank or compensation or removal of such person or groups of persons from said service. The right of persons employed in the civil service of the United States, either individually or collectively, to petition Congress, or any Member thereof, or to furnish information to either House of Congress, or to any committee or Member thereof, shall not be denied or interfered with. (37 Stat. 555, Aug. 24, 1912.)

SEC. 1784. No officer, clerk, or employee in the United States Government employ shall at any time solicit contributions from other officers, clerks, or employees in the Government service for a gift or present to those in a superior official position; nor shall any such officials or clerical superiors receive any gift or present offered or presented to them as a contribution from persons in Government employ receiving a less salary than themselves; nor shall any officer or clerk make any donations as a gift or present to any official superior. Every person who violates this section shall be summarily discharged from the Government employ. (R. S., 312, Feb. 1, 1870.)

It shall be unlawful to pay or offer or promise to pay any sum of money or any other thing of value, to any person, firm, or corporation in consideration of the use or promise to use any influence, whatsoever, to procure any appointive office under the Government of the United States for any person whatsoever.

Sec. 2. It shall be unlawful to solicit or receive from anyone whatsoever, either as a political contribution, or for personal emolument, any sum of money or thing of value whatsoever, in consideration of the promise of support, or use of influence, or for the support or influence of the payee, in behalf of the person paying the money, or any other person, in obtaining any appointive office under the Government of the United States.

Sec. 3. Anyone convicted of violating this act shall be punished by imprisonment of not more than one year, or by a fine of not more than $1,000, or by both such fine and imprisonment.

Sec. 4. All acts and parts of acts inconsistent herewith are hereby repealed. (Act of December 11, 1926.)

DOCUMENT NO. 3

THE CLASSIFICATION ACT, 1926

Classification of Civilian Positions[1]

Section 661. Citation.—This chapter may be cited as "The Classification Act of 1923." (Mar. 4, 1923, c. 265, § 1, 42 Stat. 1488.)

662. Definitions.—The term "compensation schedules" means the schedules of positions, grades, and salaries, as contained in section 673 of this title.

The term "position" means a specific civilian office or employment, whether occupied or vacant, in a department. . . .

The term "employee" means any person temporarily or permanently in a position.

The term "service" means the broadest division of related offices and employments.

The term "grade" means a subdivision of a service, including one or more positions for which approximately the same basic qualifications and compensation are prescribed, the distinction between grades being based upon differences in the importance, difficulty, responsibility, and value of the work.

The term "class" means a group of positions to be established under this chapter sufficiently similar in respect to the duties and responsibilities thereof that the same requirements as to education, experience, knowledge, and ability are demanded of incumbents, the same tests of fitness are used to choose qualified appointees, and the same schedule of compensation is made to apply with equity.

The term "compensation" means any salary, wage, fee, allowance, or other emolument paid to an employee for service in a position. (Mar. 4, 1923, c. 265, § 2, 42 Stat. 1488.)

663. Personnel Classification Board; members; chairman; details to board; cooperation of Civil Service Commission, etc.; rules and regulations; grades and subdivisions thereof.—There is established an ex officio board, to be known as the Personnel Classification Board, to consist of the Director of the Bureau of the Budget or an alternate from that bureau designated by the director, a member of the Civil Service Commission or an alternate from that commission designated by the commission, and the Chief of the United States Bureau of Efficiency or an alternate from that bureau designed by the chief of the bureau. The Director of the Bureau of the Budget or his alternate shall be chairman of the board. . . .

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[1] The Code of Laws of the United States of America in Force Dec. 6, 1926, chap. 13.

The board shall make all necessary rules and regulations not inconsistent with the provisions of this chapter and provide such subdivisions of the grades contained in section 673 of this title and such titles and definitions as it may deem necessary according to the kind and difficulty of the work. Its regulations shall provide for ascertaining and recording the duties of positions and the qualifications required of incumbents, and it shall prepare and publish an adequate statement giving (1) the duties and responsibilities involved in the classes to be established within the several grades, illustrated where necessary by examples of typical tasks, (2) the minimum qualifications required for the satisfactory performance of such duties and tasks, and (3) the titles given to said classes. In performing the foregoing duties, the board shall follow as nearly as practicable the classification made pursuant to the Executive order of October 24, 1921. The board may from time to time designate additional classes within the several grades and may combine, divide, alter, or abolish existing classes. Department heads shall promptly report the duties and responsibilities of new positions to the board. The board shall make necessary adjustments in compensation for positions carrying maintenance and for positions requiring only part-time service. (Mar. 4, 1923, c. 265, § 3, 42 Stat. 1489.)

664. Allocation of positions to grades and fixing of rates of compensation by department heads; review and revision by board.—After consultation with the board, and in accordance with a uniform procedure prescribed by it, the head of each department shall allocate all positions in his department in the District of Columbia to their appropriate grades in the compensation schedules and shall fix the rate of compensation of each employee thereunder, in accordance with the rules prescribed in section 666 of this title. Such allocations shall be reviewed and may be revised by the board and shall become final upon their approval by said board. Whenever an existing position or a position created by law after March 4, 1923, shall not fairly and reasonably be allocable to one of the grades of the several services described in the compensation schedules, the board shall adopt for such position the range of compensation prescribed for a grade, or a class thereof, comparable therewith as to qualifications and duties.

In determining the rate of compensation which an employee shall receive, the principle of equal compensation for equal work irrespective of sex shall be followed. (Mar. 4, 1923, c. 265, § 4, 42 Stat. 1489.)

666. Rules governing fixing of compensation schedules.—In determining the compensation to be established initially for the several employees the following rules shall govern:

1. In computing the existing compensation of an employee, any bonus which the employee receives shall be included.

2. If the employee is receiving compensation less than the minimum rate of the grade or class thereof in which his duties fall, the compensation shall be increased to that minimum rate.

3. If the employee is receiving compensation within the range of salary prescribed for the appropriate grade at one of the rates fixed therein, no change shall be made in the existing compensation.

4. If the employee is receiving compensation within the range of salary prescribed for the appropriate grade, but not at one of the rates fixed therein, the compensation shall be increased to the next higher rate.

5. If the employee is not a veteran of the Civil War, or a widow of such veteran, and is receiving compensation in excess of the range of salary prescribed for the appropriate grade, the compensation shall be reduced to the rate within the grade nearest the present compensation.

6. All new appointments shall be made at the minimum rate of the appropriate grade or class thereof. (Mar. 4, 1923, c. 265, § 6, 42 Stat. 1490.)

667. Increases in compensation.—Increases in compensation shall be allowed upon the attainment and maintenance of the appropriate efficiency ratings, to the next higher rate within the salary range of the grade. In no case shall the compensation of any employee be increased unless Congress has appropriated money from which the increase may lawfully be paid, nor shall the rate for any employee be increased beyond the maximum rate for the grade to which his position is allocated. Nothing herein contained shall be construed to prevent the promotion of an employee from one class to a vacant position in a higher class at any time in accordance with civil service rules, and when so promoted the employee shall receive compensation according to the schedule established for the class to which he is promoted. (Mar. 4, 1923, c. 265, § 7, 42 Stat. 1490.)

669. Efficiency ratings.—The board shall review and may revise uniform systems of efficiency rating established or to be established for the various grades or classes thereof, which shall set forth the degree of efficiency which shall constitute ground for (*a*) increase in the rate of compensation for employees who have not attained the maximum rate of the class to which their positions are allocated, (*b*) continuance at the existing rate of compensation without increase or decrease, (*c*) decrease in the rate of compensation for employees who at the time are above the minimum rate for the class to which their positions are allocated, and (*d*) dismissal.

The head of each department shall rate in accordance with such systems the efficiency of each employee under his control or direction. The current ratings for each grade or class thereof shall be open to inspection by the representatives of the board and by the employees of the department under conditions to be determined by the board after consultation with the department heads.

Reductions in compensation and dismissals for inefficiency shall be made by heads of departments in all cases whenever the efficiency ratings warrant, as provided herein, subject to the approval of the board.

The board may require that one copy of such current ratings shall be transmitted to and kept on file with the board. (Mar. 4, 1923, c. 265, § 9, 42 Stat. 1490.)

670. Transfer or promotion of employees.—Subject to such rules and regulations as the President may from time to time prescribe, and regardless of the department or independent establishment in which the position is located, an employee may be transferred from a position in one grade to a vacant position within the same grade at the same rate of compensation, or promoted to a vacant position in a higher grade at a higher rate of compensation, in accordance with civil service rules, any provision of existing statutes to the contrary notwithstanding. Nothing herein shall be construed to authorize or permit the transfer of an employee of the United States to a position under the municipal government of the District of Columbia, or an employee of the municipal government of the District of Columbia to a position under the United States. (June 22, 1906, c. 3514, § 5, 34 Stat. 449; Oct. 6, 1917, c. 79, §§ 6, 7, 40 Stat. 383; Mar. 28, 1918, c. 28, § 2, 40 Stat. 459; Mar. 4, 1923, c. 265, § 10, 42 Stat. 1491.)

DOCUMENT NO. 4

THE COMPENSATION ACT

COMPENSATION FOR INJURIES TO EMPLOYEES OF UNITED STATES[1]

SECTION 751. Disability or death of employee; willful misconduct.—The United States shall pay compensation as hereinafter specified for the disability or death of an employee resulting from a personal injury sustained while in the performance of his duty, but no compensation shall be paid if the injury or death is caused by the willful misconduct of the employee or by the employee's intention to bring about the injury or death of himself or of another, or if intoxication of the injured employee is the proximate cause of the injury or death. (Sept. 7, 1916, c. 458, § 1, 39 Stat. 742.)

778. United States Employees' Compensation Commission.—The United States Employees' Compensation Commission shall be composed of three commissioners appointed by the President, by and with the advice and consent of the Senate, one of whom shall be designated by the President as chairman. No commissioner shall hold any other office or position under the United States. No more than two of said commissioners shall be members of the same political party. One of said commissioners shall be appointed for a term of two years, one for a term of four years, and one for a term of six years, and at the expiration of each of said terms, the commissioner then appointed shall be appointed for a period of six years. The principal office of said commission shall be in Washington, District of Columbia, but the said commission is authorized to perform its work at any place deemed necessary by said commission, subject to the restrictions and limitations of this chapter. (Sept. 7, 1916, c. 458, § 28, 39 Stat. 748.)

785. Employees' compensation fund.—There is authorized to be appropriated, from any money in the Treasury not otherwise appropriated, the sum of $500,000, to be set aside as a separate fund in the Treasury, to be known as the employees' compensation fund. To this fund there shall be added such sums as Congress may from time to time appropriate for the purpose. Such fund, including all additions that may be made to it, is authorized to be permanently appropriated for the payment of the compensation provided by this chapter, including the medical, surgical, and hospital services and supplies provided by section 759 of this title, and the transportation and burial expenses provided by sections 759 and 761 of this title. The commission shall submit annually to the Secretary of the Treasury estimates of the appropriations necessary for the maintenance of the fund. (Sept. 7, 1916, c. 458, § 35, 39 Stat. 749.)

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[1] U.S. Code, chap. 15.

786. Findings and award by commission; payment of compensation.—The commission, upon consideration of the claim presented by the beneficiary, and the report furnished by the immediate superior and the completion of such investigation as it may deem necessary, shall determine and make a finding of facts thereon and make an award for or against payment of the compensation provided for in this chapter. Compensation when awarded shall be paid from the employees' compensation fund. (Sept. 7, 1916, c. 458, § 36, 39 Stat. 749.)

787. Same; review.—If the original claim for compensation has been made within the time specified in section 770 of this title, the commission may, at any time, on its own motion or on application, review the award, and, in accordance with the facts found on such review, may end, diminish, or increase the compensation previously awarded, or, if compensation has been refused or discontinued, award compensation. In the absence of fraud or mistake in mathematical calculation, the finding of facts in, and the decision of the commission upon, the merits of any claim presented under or authorized by this chapter if supported by competent evidence shall not be subject to review by any other administrative or accounting officer, employee, or agent of the United States. Any award made by the Compensation Commission for disability or death resulting from a personal injury sustained prior to June 5, 1924, shall be valid, if such award would be valid if made in respect to an injury sustained thereafter. (Sept. 7, 1916, c. 458, § 37, 39 Stat. 749; June 5, 1924, c. 261, § 1, 43 Stat. 389.)

DOCUMENT NO. 5

CIVIL SERVICE RULES

[PROMULGATED APRIL 15, 1903, AND REVISED TO MARCH 1, 1928]

PROMULGATING ORDER

In the exercise of power conferred by the Constitution, by section 1753, Revised Statutes, and by the civil service act of January 16, 1883, the President promulgates the following rules in lieu of those promulgated May 6, 1896, and the amendments thereof:

RULE I

POLITICS AND RELIGION

1. *No interference with elections.*—No person in the executive civil service shall use his official authority or influence for the purpose of interfering with an election or affecting the results thereof. Persons who by the provisions of these rules are in the competitive classified service, while retaining the right to vote as they please and to express privately their opinions on all political subjects, shall take no active part in political management or in political campaigns.

2. *No disclosures or discriminations.*—No question in any form of application or in any examination shall be so framed as to elicit information concerning the political or religious opinions or affiliations of any applicant, nor shall any inquiry be made concerning such opinions or affiliations, and all disclosures thereof shall be discountenanced. No discrimination shall be exercised, threatened, or promised by any person in the executive civil service against or in favor of an applicant, eligible, or employee in the classified service because of his political or religious opinions or affiliations.

3. *Recommendations not considered.*—No recommendation of an applicant, eligible, or employee in the competitive service involving a disclosure of his political or religious opinions or affiliations shall be considered or filed by the commission or by any officer concerned in making appointments or promotions.

RULE II

CLASSIFICATION OF THE SERVICE

1. *Extent of the classified service.*—The classified service shall include all officers and employees in the executive civil service of the United States, heretofore or hereafter appointed or employed, in positions now existing or hereafter to be created, of whatever function or designation, whether compensated by a fixed salary or otherwise, except persons employed merely as

laborers and persons whose appointments are subject to confirmation by the Senate; but no right of classification shall accrue to persons whose appointment or assignment to classified duties is in violation of the civil-service rules.

2. *Examination required.*—No person shall be appointed, employed, promoted, or transferred in the classified service, or perform the duties of any position therein, until he passes an examination in conformity with these rules, unless specially exempted thereunder.

3. *Appointment without examination.*—Appointments to the excepted positions named in Schedule A of these rules may be made without examination or upon noncompetitive examination; but the proper appointing officer may fill an excepted position as competitive positions are filled, in which case the person appointed will receive all the right of a competitive employee.

4. *Assignment of excepted employees.*—A person appointed without competitive examination under section 3 of this rule or by authority of an act of Congress shall not be assigned to the work of a competitive classified position without the approval of the commission or specific provision of law.

5. [Assignment of laborers.]

6. [Classification of exempted employees.]

7. [Classification in post-office.]

8. [Indian agent.]

9. [Army officers appointed superintendents.]

10. *Noncompetitive examination in rare cases.*—Whenever the commission shall find that the duties or compensation of a vacant position are such, or that qualified persons are so rare that in its judgment such position can not, in the interest of good civil-service administration, be filled at that time through open competitive examination, it may authorize such vacancy to be filled without competitive examination, and in any case in which such authority may be given, evidence satisfactory to the commission of the qualifications of the person to be appointed without competitive examination shall be required. A detailed statement of the reasons for its action in any case arising hereunder shall be made in the records of the commission and shall be published in its annual report. Any subsequent vacancy in such position shall not be filled without competitive examination except upon express authority of the commission in accordance with this section.

RULE III

EXAMINATIONS

1. *Competitive examination.*—The commission shall prepare and hold open competitive examinations for admission to the classified service, which examinations shall be of a practical and suitable character, and shall be held at such times and places as may most nearly meet the convenience of applicants and the needs of the service.

2. *Noncompetitive examination.*—Where, in its opinion, the conditions of good administration warrant, the commission may give noncompetitive ex-

aminations to test fitness for (*a*) transfer, reinstatement, or promotion; and (*b*) appointment to the positions named in Schedule B of these rules.

RULE IV

BOARDS OF EXAMINERS

1. *Appointment and duties.*—The commission shall designate from among persons in the Federal service, after consulting the head of the department or office in which such persons serve, such boards of examiners as it may deem necessary. Their members shall perform such duties as the commission may direct, in connection with the execution of the civil service act and of these rules, and in the performance thereof they shall be under the direct and sole control of the commission. Such duties shall be considered part of the duties of the office in which they are serving and time shall be allowed therefor during office hours. No board shall be composed solely of adherents of one political party when other persons are available and competent to serve.

2. *Philippine Civil Service.*—The commission shall render all practicable assistance to the Philippine civil-service board, and shall conduct examinations, upon its request, under such regulations as may be jointly agreed upon.

3. *Executive officers to facilitate examinations.*—Persons in the executive civil service shall facilitate the holding of examinations and other work of the commission; and executive officers in charge of public buildings shall permit and arrange for the use of suitable rooms under their charge, and for heating, lighting, and furnishing the same.

RULE V

QUALIFICATIONS OF APPLICANTS

1. *Citizenship.*—No person shall be admitted to examination unless he be a citizen of or owe allegiance to the United States: *Provided*, That when an examination has been duly announced to fill a vacancy and there is a lack of eligibles who are citizens, the commission may, in its discretion, examine persons who are not citizens, but they shall not be certified for appointment so long as citizens are eligible.

2. *Form of application.*—Application for examination must be made under oath, in such form and manner and accompanied by such certificates as the commission may prescribe.

3. Revoked.

4. *Disqualifications.*—The commission may refuse to examine an applicant or to certify an eligible for any of the following reasons: (*a*) Dismissal from the service for delinquency or misconduct within one year next preceding the date of his application; (*b*) physical or mental unfitness for the position for which he applies: *Provided*, That the commission may, in its discretion, exempt from the physical requirements established for any position a disabled honorably discharged soldier, sailor, or marine upon a certificate of the United States Veterans' Bureau attesting that he has completed an appropriate and sufficient rehabilitatory course of training for the duties of the

class of positions in which employment is sought: *And provided further*, That the commission may, in its discretion, waive the physical requirements in the case of a disabled veteran not so trained to permit his examination; (*c*) criminal, infamous, dishonest, immoral, or notoriously disgraceful conduct; (*d*) intentionally making a false statement in any material fact, or practicing any deception or fraud in securing examination, registration, certification, or appointment; (*e*) refusal to furnish testimony as required by Rule XIV; (*f*) the habitual use of intoxicating beverages to excess. Any of the last five foregoing disqualifications shall also be good cause for removal from the service.

5. *Age limits.*—The commission may, with the approval of the proper appointing officer, change by regulation the existing age limits for entrance to the examinations under these rules; but persons preferred under the urgent deficiency act of July 11, 1919, may be examined without regard to age.

6. *Trades positions.*—Applicants for positions in the recognized mechanical trades must have served as apprentices or journeymen for such periods as the commission may prescribe.

RULE VI

RATINGS AND ELIGIBILITY

1. *Rating.*—Examination papers shall be rated on a scale of 100, and the subjects therein shall be given such relative weights as the commission may prescribe. Honorably discharged soldiers, sailors, and marines, and widows of such, and wives of injured soldiers, sailors, and marines, who themselves are not qualified, but whose wives are qualified for appointment, shall have five points added to their earned ratings in examinations for entrance to the classified service. Applicants for entrance examination who, because of disability, are entitled either to a pension by authorization of the Bureau of Pensions or to compensation or training by the Veterans' Bureau, shall have ten points added to their earned ratings. In examinations where experience is an element of qualifications, time spent in the military or naval service of the United States during the World War or the war with Spain shall be credited in an applicant's ratings where the applicant's actual employment in a similar vocation to that for which he applies was temporarily interrupted by such military or naval service but was resumed after his discharge. Competitors shall be duly notified of their ratings.

2. *Eligible registers.*—All competitors rated at 70 or more shall be eligible for appointment, and their names shall be placed on the proper register according to their ratings.

3. *Term of eligibility.*—The term of eligibility shall be one year, beginning with the date on which the name of the eligible is entered on the register. This term may be extended, in the discretion of the commission, for all those on any register when the conditions of good administration render it inexpedient to hold a new examination.

RULE VII

CERTIFICATION

1. *Method of filling vacancies.*—Any position or employment in the classified service not excepted from competitive examination, unless filled by reinstatement, transfer, promotion, or reduction, shall be filled in the following manner:

a) *Certification.*—The nominating or appointing officer shall request the certification of eligibles, and the commission shall certify, from the head of the register of eligibles appropriate for the group in which the position or positions to be filled are classified, a number of names sufficient to permit the nominating or appointing officer to consider three names in connection with each vacancy. When so provided by regulation of the commission, selection shall be made from the register by the nominating or appointing officer without preliminary certification of the commission. Certification of an eligible for temporary appointment shall not affect his certification for probational appointment. Certifications shall be made without regard to sex unless sex is specified in the request.

b) *Selections.*—The nominating or appointing officer shall make selection for the first vacancy from not more than the highest three names certified, or on the register, with sole reference to merit and fitness, unless objection shall be made and sustained by the commission, to one or more of the persons certified, for any of the reasons stated in Rule V, section 4. For the second vacancy he shall make selection from not more than the highest three remaining, who have not been within his reach for three separate vacancies, or against whom objection has not been made and sustained in the manner indicated. The third and any additional vacancies shall be filled in like manner. More than one selection may be made from the three names next in order for appointment, or from two names if the register contains only two, subject to the requirements of section 2 of this rule as to the apportionment. An appointing officer who passes over a veteran eligible and selects a nonveteran with the same or lower rating shall place in the records of the department his reasons for so doing. Any eligible who has been within reach for three separate vacancies in his turn may be subsequently selected, subject to the approval of the commission from the certificate on which his name last appeared, if the condition of the register has not so changed as to place him in other respects beyond reach of certification.

c) *Probationary appointment.*—The person selected for appointment shall be duly notified by the appointing officer, and upon accepting and reporting for duty shall receive from such officer a certificate of appointment. The first six months under this appointment shall be a probationary period; but the commission and the department concerned may, by regulation, fix the probationary period at one year for any specified positions. If and when, after full and fair trial, during this period, the conduct or capacity of the probationer be not satisfactory to the appointing officer, the probationer shall be so notified in writing, with a full statement of reasons, and this notice shall terminate his service. His retention in the service beyond the probationary period confirms his absolute appointment.

A probationer separated from the service without delinquency or misconduct may be restored to the register of eligibles, in the discretion of the commission, for the remainder of his period of eligibility.

2. *Apportionment.*—Certification for appointment in the departments or independent offices at Washington shall be so made as to maintain, as nearly as the conditions of good administration will warrant, the apportionment of appointments among the several States and Territories and the District of Columbia upon the basis of population, but eligibles who have been granted military preference shall be certified without regard to apportionment: *Provided,* That appointments to the following positions shall not be so apportioned:

In all departments and offices: Apprentice, cabinet-maker, carpenter, electric lineman, electric wireman, engraver, gardener, helper (if approved by the commission), painter, plumber, skilled laborer (female), student, and telephone operator.

In the Government Printing Office, mail equipment shops, local offices in the District of Columbia, field service of the military staff departments, and at Army headquarters: All positions.

In the Bureau of Engraving and Printing: Plate printer and skilled helper.

In the General Accounting Office: Operative for the audit of accounts and vouchers of the Postal Service by means of labor-saving devices.

3. *District certification.*—The commission may arrange the territory of the United States into appropriate districts for the purpose of certification to positions in parts of the service not subject to the apportionment, and certification to any such position may be confined to residents of the district in which such position is located.

RULE VIII

TEMPORARY APPOINTMENT

1. *Pending regular filling of vacancy.*—Temporary appointment without examination and certification by the commission shall not be made to a competitive position in any case except when the public interest so requires, and then only upon the prior authorization of the commission; and any appointment so authorized shall continue only for such period as may be necessary to make appointment through certification of eligibles, and in no case without prior approval of the commission shall extend beyond 30 days from receipt by the appointing officer of the commission's certificate; and when a vacancy is to be filled by promotion or transfer for which the commission's certificate is not required and a temporary appointment is authorized by the

commission under the provisions of this section pending the promotion or transfer, such temporary appointment shall in no case continue beyond the period of 30 days without prior approval of the commission.

2. *Pending establishment of register.*—When there are no eligibles upon a register for any grade in which a vacancy exists and the public interest requires that it be filled before eligibles can be provided by the commission, then the commission may authorize temporary appointment without examination. Such appointment shall continue only for such period as may be necessary to make appointment through certification, and in no case without prior approval of the commission shall extend beyond 30 days from the receipt by the appointing officer of the commission's certification of eligibles.

3. [Pending full certification.]

4. [Job employment.]

5. [Temporary appointment made permanent.]

RULE IX

REINSTATEMENT

1. *Certificate required—Conditions.*—A person separated without delinquency or misconduct from a competitive position or from a position which he entered by transfer or promotion from a competitive position or to accept another appointment in the executive civil service may be reinstated upon certificate of the commission subject to the following limitations:

a) Unless otherwise provided hereinafter a person may be reinstated only to the department or independent Government establishment from which separated and upon requisition made within one year from the date of his separation. When the commission and the appointing officer are in agreement that the public interest requires such unusual action, the commission may allow reinstatement after absolute appointment in any part of the classified service, and it may also authorize waiver of the one-year limit herein prescribed under the following time limitations: Two years where service has been two years but less than three years; three years where service has been three years but less than four years; four years where service has been four years but less than five years; and five years where service has been five years or more.

b) A person honorably released from the active military or naval service of the United States after service in the Civil War, or the war with Spain, or the war with Germany, or his widow, or an Army nurse of any of said wars, or the wife of an honorably released totally disabled veteran of any of such wars may be reinstated within five years from the date of separation. When the commission and the appointing officer are in agreement that the public interest requires such action reinstatement may be made without time limit.

c) A former classified employee retired upon annuity under the act of May 22, 1920, by reason of total disability, who is eligible for reinstatement in his former department or office by reason of recovery and termination of annuity, shall also be eligible for reinstatement to an appropriate position in any part of the service, subject to the conditions and limitations of the civil-service rules.

d) No person in any of the foregoing groups may be reinstated to a position requiring an examination different from that required in the position from which he was separated without passing an appropriate examination.

RULE X

TRANSFER

Transfers shall be governed as follows:

1. *Subordinate to promotions.*—No transfer shall be made to a competitive position above the lowest class in any grade unless the appointing officer shall certify that the position can not be adequately filled by promotion; but the commission may, with the approval of the head of any department, adopt regulations applicable to the service in or under such department, declaring what class shall be regarded as the lowest in any grade.

2. *From excepted to competitive position.*—No person appointed without competitive examination to a position classified at the time of such appointment, and no person serving in an unclassified position or in a position named in Schedule A or Schedule B, not appointed by competitive examination, or by transfer or promotion from a competitive position, shall be transferred to a competitive position, except as hereinafter provided in this rule and in Schedule A.

3. *Retransfer.*—Any person may be retransferred to a position in which he was formerly employed or to any position to which transfer could be made therefrom if since his transfer he has served continuously and satisfactorily under any of the following conditions:

1) In the executive or judicial civil service of the United States or of its insular possessions.

2) In the legislative service.

3) In the service of a State, county, municipality, or foreign government in a position in which he has acquired valuable training and experience.

Such retransfer may be made without compliance with clauses (*b*), (*c*), (*d*), and (*e*), of section 8 of this rule.

4. *From the Office of the President.*—Any person who has served for at least two years in the office of the President of the United States may be transferred to a competitive classified position upon such tests of fitness as the commission may deem proper.

5–7. [Special cases.]

8. *Certificate required.*—Unless otherwise specifically provided in this rule no person shall be transferred except on certificate of the commission previously obtained and subject to the following limitations:

a) *Absolute appointment.*—He must have received absolute appointment.

b) *Age limit.*—He must be within the age limitations prescribed for examination for the position to which his transfer is proposed; but whenever the commission and the appointing officer are in agreement that the public interest requires such unusual action the commission may approve transfer without regard to age limitations.

c) *Apportionment.*—The apportionment must be observed unless waived by the commission upon the certificate of the appointing officer that the transfer is required in the interests of good administration, setting forth in detail the reasons therefor.

d) *Examination.*—He must pass an appropriate examination whenever different tests are prescribed for original entrance to the position to which transfer is proposed.

e) *Qualifications and experience.*—He shall not be transferred unless, in the judgment of the commission, he possesses experience, qualifications, or training which are required for the proper performance of the duties of the position to which transfer is proposed and which render necessary in the interests of the service the filling of the position by his transfer rather than by an original appointment or promotion in the manner provided by the civil service act.

9. *Residence.*—The person to be transferred from a nonapportioned to an apportioned position shall be required, previous to his transfer, to prove his residence in the same manner as for original appointment.

10. [Philippine Service.]

11. [Porto Rican Service.]

12. [Panama Canal Service.]

13. [Service beyond seas.]

RULE XI

PROMOTION

1. *Competitive tests.*—Competitive tests or examinations shall, as far as practicable and useful, be established to test fitness for promotion in the classified service.

2. *Limitations.*—Until regulations to govern promotions are made promotions may be made upon any test of fitness not disapproved by the commission which may be determined upon by the promoting officer, subject to the following limitations:

a) The age limitations and apportionment must be observed.

b) In case of promotion to a position for which the entrance tests are different the person to be promoted must first pass an appropriate examination before the commission.

c) Any employee in the classified Indian Service may, with the approval of the Secretary of the Interior, be promoted without examination to the position of superintendent of an Indian school, upon a statement of the

Commissioner of Indian Affairs that the employee possesses the requisite business and executive qualifications to fill the position, and the commission will on such statement issue the necessary certificate.

d) No employee shall be promoted during probation except upon approval of the commission previously obtained.

3. *Improper recommendation.*—No recommendation for the promotion of a classified employee shall be considered by any officer concerned in making promotions unless it be made by the person under whose supervision such employee has served; and such recommendation by any other person, if made with the knowledge and consent of the employee, shall be sufficient cause for debarring him from the promotion proposed, and a repetition of the offense shall be sufficient cause for removing him from the service.

4. *Promotion of substitutes.*—Substitutes shall be promoted to the first vacancies occurring in regular positions in the order of their original appointment, whenever there are substitutes of the required sex who are eligible and will accept, unless such vacancies are filled by promotion, transfer, or reinstatement.

5. *Promotion to former grade.*—A person who has been reinstated in the classified service in a grade lower than that from which he had been separated may be promoted to his former grade without examination.

6. *Operatives in General Accounting Office.*—Operatives in the General Accounting Office for the audit of accounts and vouchers of the Postal Service by means of labor-saving devices, appointed without regard to the apportionment, shall not be promoted or transferred to apportioned positions, whether they are residents of States or Territories which are entitled to appointments to apportioned positions or not, and said operatives shall not be assigned to other work.

RULE XII

REMOVALS AND REDUCTIONS

1. *Reasons to be furnished.*—Section 6 of the act of August 24, 1912, 37 Stat. 555, provides: "That no person in the classified civil service of the United States shall be removed therefrom except for such cause as will promote the efficiency of said service and for reasons given in writing, and the person whose removal is sought shall have notice of the same and of any charges preferred against him, and be furnished with a copy thereof, and also be allowed a reasonable time for personally answering the same in writing; and affidavits in support thereof; but no examination of witnesses nor any trial or hearing shall be required except in the discretion of the officer making the removal; and copies of charges, notice of hearing, answer, reasons for removal, and of the order of removal shall be made a part of the records of the proper department or office, as shall also the reasons for reduction in rank or compensation; and copies of the same shall be furnished to the person affected upon request, and the Civil Service Commission also shall, upon request, be furnished copies of the same. . . . .

2. *Like penalties for like offenses.*—In making removals or reductions, and in other punishment, like penalties shall be imposed for like offenses, and no discrimination shall be exercised for political or religious reasons.

3. *Suspension.*—Pending action under section 1 of this rule, or for disciplinary reasons, a person may be suspended for a period not to exceed ninety days, but the reasons for such suspension shall at the time of the suspension be filed in the records of the proper department or office and copies shall be furnished the commission upon request. The period of suspension may be extended beyond ninety days with the prior consent of the commission.

4. *Power to investigate.*—The commission shall have no jurisdiction to review the findings of a removing officer upon the reasons and answer provided for in section 1 of this rule, nor shall the commission have authority to investigate any removal or reduction, unless it is alleged, with offer of proof, that the procedure required by section 1 of this rule has not been followed or that the removal was made for political or religious reasons.

5. *Retention of soldiers and sailors.*—In harmony with statutory provisions, when reductions are being made in the force, in any part of the classified service, no employee entitled to military preference in appointment shall be discharged or dropped or reduced in rank or salary if his record is good.

RULE XIII

REPORTS OF CHANGES

1. *Report by appointing officers.*—Every nominating or appointing officer in the executive civil service shall report in detail to the commission whenever and in such manner as it may prescribe, all changes in the service under his authority, whether they affect positions or employees that are classified, unclassified, excepted, permanent, temporary, or subject to contract.

2. *List of positions.*—Such officers shall also furnish to the commission, when requested, a list of all the positions and employments under their authority, together with the names, designations, compensations, duties, and dates of appointment or employment of all persons serving therein.

3. *Statement of duties.*—Reports of appointments and changes in status of mere laborers or workmen shall be accompanied by a statement setting forth specifically the kind of labor performed in detail sufficient to enable the commission to determine the status of each position as classified or unclassified; and a similar statement of duties performed by any employee or pertaining to any position in the executive civil service shall be furnished to the commission on request. All essential changes of duties pertaining to persons appointed as mere laborers or workmen without examination under the civil-service rules shall be at once reported to the commission.

RULE XIV

TESTIMONY

Duty of officers and employees.—It shall be the duty of every officer and employee in the executive civil service, and of every applicant or eligible for a position therein, to give to the commission or its authorized representatives all proper and competent information and testimony in regard to matters inquired of arising under the civil service act and rules, and to subscribe such testimony and make oath or affirmation to the same before some officer authorized by law to administer oaths.

RULE XV

WITHHOLDING SALARY

Legal appointment necessary to compensation.—If the commission shall find that any person is holding a position in violation of the civil service act or of the rules promulgated in accordance therewith, it shall, after notice to the person affected and an opportunity for explanation, certify the facts to the proper appointing officer. If such person be not dismissed within 10 days thereafter, it shall certify the facts to the proper disbursing and auditing officers, and such officers shall not pay or audit the salary or wages of such person thereafter accruing: *Provided*, That if a question of law respecting the power to appoint or employ is raised in any such case, the President or the head of a department may obtain the opinion of the Attorney General thereon.

RULE XVI

REGULATIONS

1. *Authority to make regulations.*—The commission shall have authority to make regulations for the execution of these rules.
2. [Navy yard regulations.]

SCHEDULE A

POSITIONS EXCEPTED FROM EXAMINATION UNDER RULE 11, SECTION 3[1]

No office or position is excepted unless it is specifically named herein. Not more than one position shall be treated as excepted under the title of any such position unless a different number be indicated.

I. THE ENTIRE CLASSIFIED SERVICE

1. Two private secretaries or confidential clerks to the head of each of the executive departments and one to each assistant head and one to the Public Printer.

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[1] See positions also excepted by law from examinations and the civil service act and regulations.

[The classified service does not include positions under the government of the District of Columbia, but positions in the fire and police services although not classified are filled under the civil service rules; Library of Congress, legislative and judicial branches, Consular and Diplomatic Services, Pan American Union, Emergency Fleet Corporation, Federal Reserve Board, Federal Farm Loan Board, War Finance Corporation, or the U.S. Railroad Administration]

2. One private secretary or confidential clerk to each of the heads of bureaus, appointed by the President in the executive departments, if authorized by law.

3. All persons appointed by the President without confirmation by the Senate.

4. Attorneys, assistant attorneys, and special assistant attorneys, except those in the Veterans' Bureau.

5. Chinese, Japanese, and Hindu interpreters.

6. Any person receiving for his personal salary compensation aggregating not more than $480 per annum whose duties require only a portion of his time, or whose services are needed for very brief periods at intervals, provided that employment under this provision shall not be for job work such as contemplated in section 4 of Rule VIII. The name of the employee, designation, duties, rate of pay, and place of employment shall be shown in the periodical reports of changes; and in addition when payment is not at a per annum rate, the total service rendered and the distribution of each service during the year shall be shown in the report of changes at the end of each year or when the employee is separated from the service.

7. Any person employed in a foreign country, or in the island of Guam, or in the island of Samoa, or in the Virgin Islands, when in the opinion of the Civil Service Commission it is not practicable to treat the position as in the competitive classified service; but this exception shall not apply to any person employed in a foreign country contiguous to the United States in the service of the Bureau of Immigration, Department of Labor.

SCHEDULE B

Positions Which May Be Filled upon Noncompetitive Examinations

The noncompetitive examinations authorized under Rule III, section 2, shall consist of the same tests of fitness as those applied to other persons seeking appointment through competitive examination.

I. INTERIOR DEPARTMENT

1. Superintendent, teacher, manual-training teacher, kindergartner, physician, matron, clerk, seamstress, farmer, and industrial teacher in the Indian Service at large when filled by Indians.

2. Junior clerk, messenger, assistant messenger, and messenger boy in the Office of Indian Affairs when filled by Indians.

3. Any competitive position at an Indian school when filled by the wife of a competitive employee at that school.

4. Miners, whether employed in rescue or first-aid work at rescue stations, on rescue cars, or at experimental mines, under the Bureau of Mines: *Provided*, That should the Civil Service Commission at any time have reason to believe that the privilege so afforded is abused it may revoke it.

5. Six inspectors to act as the immediate and confidential representatives of the Commissioner of Indian Affairs, subject to such evidence of qualifications as the Civil Service Commission may prescribe after consultation with the Commissioner of Indian Affairs.

6. One superintendent of irrigation in the Indian Service, who shall be competent to pass upon water rights.

7. Disciplinarian in the Indian schools, subject to such evidence of qualifications as the Civil Service Commission may prescribe after consultation with the Commissioner of Indian Affairs.

II. INTERSTATE COMMERCE COMMISSION

1. Not exceeding 20 special agents under the Division of Prosecution, subject to such evidence of qualifications as the Civil Service Commission may prescribe after consultation with the Interstate Commerce Commission: *Provided,* That should the Civil Service Commission at any time have reason to believe that the privilege so afforded is abused it may revoke it.

2. Five assistant engineers to be employed under the act of March 1, 1913, providing for the valuation of the property of carriers.

THE FRENCH CIVIL SERVICE

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INTRODUCTION[1]

In France the term "official" (*fonctionnaire*) is ordinarily used for agents of the public services. In this term are included individuals who have very different occupations: soldiers, judges, employees of the central administrations, of the departments and the communes, postal workers, the highway service, and others.

On the basis of what criterion are these individuals, who at first sight scarcely seem to have common points, combined into a single social category? It is only after having answered this question and given a legal definition of the term "official" that it will be possible to study the régime to which civil servants are now subjected and to give a judgment on this régime, indicating obvious reforms which might improve it.

DEFINITION OF CIVIL SERVANTS[2]

There exists in France no official definition of the status of a civil servant, but there is general agreement today from the point of view of public law in recognizing the status of civil servants with respect to individuals who combine the following qualifications: (1) membership in a public service, (2) permanent tenure. These two conditions must be examined separately.

A. THE PUBLIC SERVICES WHICH EMPLOY CIVIL SERVANTS

To be a civil servant it is necessary first of all to belong to a public service, that is to say, to one of those organisms by means of which the public power provides for the interests of a general nature for which it has the responsibility. But is this to say that holding a position in no matter what public service gives the status of a civil servant? It would be an error to hold this opinion. It is therefore necessary to discriminate between various public services.

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[1] Translated by Leonard D. White.

[2] On this question consult Alexandre Lefas, *L'Etat et les fonctionnaires* (Paris, 1913), p. 8; Gaston Jèze, *Principes généraux du droit administratif* (2d ed.; 1914), p. 399.

There exist in France two methods of classifying public services: (1) as to the authority which has created them and upon which they depend, (2) as to their mode of organization.

1. There exist several methods of organizing public services. Certain services are managed directly by the public authorities: these are the public services *en régie*. But certain services may by reason of their nature be established and managed under a broader and more remote control of the public authorities. These are set up by the processes of grant of franchise or lease (*concession et affermage*). In these two cases public powers are transferred to persons who are not immediately dependent upon public authority and who reach agreements with the public authorities on the basis of equality, by virtue of which these persons undertake for a certain remuneration to carry on such and such a service.

Given the coexistence of these three methods of organizing public services, *régie*, franchise, and lease, to the personnel of which of them can the status of civil servants be ascribed?

Practice and jurisprudence agree in answering this question by limiting the status of civil servants to the personnel of the public services carried on directly by the government. In every case agents of services organized by franchise or lease do not have this status.

The reason for this distinction is as follows: services carried on by franchise or lease are organized on the basis of conditions analogous to private enterprise. The holder of a franchise or a lease who is at the head of the undertaking resembles at many points the industrial entrepreneur. It is considered that there is no reason for recognizing the status of civil servant, either in his case or in the case of the personnel which he employs.

This highly legalistic distinction will not exist forever. Efforts have been made for a number of years to obtain for the personnel of the public services organized by franchise or lease recognition as possessing the status of civil servants. Although in fact some advantages inherent in the status of civil servant have now been acquired by these agents, we cannot in the present state of legislation consider them as civil servants.

2. It does not suffice to observe that certain modes of organization of the public services confer exclusively the status of civil servant. We must inquire if the personnel of all public services directly managed by the state has the status of civil servant or if a distinction must not be made according to the corporate bodies into which these services are incorporated.

The French state, being a centralized state, possesses a well-articulated organization. Besides the corporate organization of the state, there exist secondary corporations, some of which have, like the state, a territorial character and have like it the problem of providing for the general needs of the community, others of which, rising from territorial and subordinate corporations, pursue a very limited object which is assigned to them.

In the first group must be ranked, on the one hand, the departments, communes, and the sections of the communes in the metropolis; on the other hand, the colonies, groups of colonies, and those of their territorial subdivisions to which corporate organization is granted (the departments in Algeria, the communes almost everywhere else).

The second group of incorporations is that of the public establishments, which comprise services pursuing the most diverse ends, including industrial manufacturing, and which instead of being simple organs of the territorial group, such as state, department, commune, or colony, are endowed with a real legal autonomy called "corporate personality," which, however, does not prevent their attachment by very narrow bonds to the territorial authority from which they have developed.

At the present time the personnel attached directly to the service of the different corporate groups which have just been enumerated can claim the status of civil servant. Such has not always been the rule, particularly for the communes and public establishments. Down to about 1879 all employees of communes and public establishments were considered by jurisprudence as bound to the authority which employed them by a work contract of private law, exclusive of the status of civil servant.

But in 1879 reversal of jurisprudence was effected and since that time service in a commune or a public establishment has been compatible with the status of civil servant.[1]

B. TYPES OF EMPLOYMENT WHICH CONFER THE STATUS OF CIVIL SERVANT

A civil servant is not created merely by participation in certain public services. To possess the status of civil servant it is also necessary to hold a permanent position in this public service. By this condition the concept of public function is limited to those positions which have a character of permanence sufficient for them to be considered as normal parts of the public service.

Only those who devote all or a part of their professional activity to the public service and who by that fact alone are incorporated in some way in the life of the public service are civil servants. This rule of permanence of employment must be defined in order to avoid any too extensive or too restrictive interpretation.

1. It is necessary first of all to note that permanence is required with regard to the position and not with regard to the holder of the position. Some agents of the public service remain on active duty (*en fonctions*) only a very short time. Such is the case of the prefect and subprefect who may at any moment be deprived of their duties; such is also the case of certain members of the teaching personnel of the universities who teach for a limited period of time: the *agrégés* of the faculties of medicine are appointed for ten years, and if at the expiration of this period of time they have not been appointed to a chair, they are obliged to leave the teaching profession. Likewise in the law faculties, certain individuals not possessing the rank of *agrégé* are charged with the responsibility for courses for periods of one year, which, however, may be renewed.

The holders of these employments are not, therefore, permanent, since the authority upon which they depend may at the end of a greater or less period of time dismiss them. But if the holders of these positions are changing, their positions remain, and the fact of this permanence suffices to confer upon the holders, even though temporary, the status of civil servants.

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[1] Tribunal de Conflits 27 Dec., 1879. Guidet Laferrière, *Traité de la juridiction administrative* (2d ed.), I, 618.

2. But whenever a position does not essentially belong to a public service, when this position exists only to satisfy temporary needs, when consequently such service requires only occasional appointments to meet these needs, the holders of these positions do not have the status of civil servants.

Let us take an example. The daily operation of the public service raises problems of a legal nature. The duty of studying them may be confided to competent civil servants who will specialize more or less in this direction, but occasionally the technical competence of the permanent agents is not sufficient; in this case if the importance of the problem in question does not make it desirable to recruit a civil servant possessing the desired skill, the administration will turn, whenever it has need for advice, to an individual whose profession gives him competence to render this service, a lawyer, for example. Thus we observe in certain departments the presence of lawyers attached in a permanent way to a public service, and who consequently have the characteristics of a civil servant, while, on the other hand, we frequently see other departments having recourse to consulting lawyers.

Other examples might be cited. To construct or to maintain the necessary properties for the public service, recourse is had now to private architects with whom the administration deals on the same conditions as any individual, now to architects attached permanently to the public service.

The interest which a department may have in turning in certain cases to individuals who do not permanently belong to its own organization is evident. Not only does this permit taking advantage of the ability of persons who by reason of their degree of specialization could not belong to the service; even more, this procedure has the merit of avoiding the unnecessary expense which would result from paying permanent employees for occasional work.

There exists, therefore, beside the permanent personnel of the public services, a sort of transient group whose co-operation is desired only in a temporary way on the precise conditions of a contract of private law. To this temporary auxiliary personnel the status of civil servant must be refused, generally speaking.

The principle which has just been laid down is always a little rigorous and requires certain modifications. There are limited cases in which one may ask whether an occasional collaborator in the public service does not possess, in spite of the uncertainty of his employment, the status of civil servant.

To settle this question it is necessary to distinguish the three groups into which can be placed the temporary personnel of the public service. These are (*a*) assistants, properly so-called (*auxiliaries*); (*b*) de facto civil servants; (*c*) draft labor.

a) *Assistants.*—Assistants, as their name indicates, are employees who do not form a part of the normal organization to which they are called in case of need, and who are dismissed as soon as the work for which they were engaged is finished. The situation of these persons is comparable to that of employees or workers of private enterprises whom their patrons hire in a period of high production and whom they fire in periods of idleness.

But it happens that in certain services when the work for which supplementary employment is needed has once been finished, new needs develop which make it necessary to keep the assistants. Little by little their situation consolidates itself. Once temporary employees, they become, in fact, permanent employees of the public services. Theoretically, they are only employees recruited on the basis of conditions analogous to those of private law; in fact, they work at their duties exactly as real civil servants. From this point it requires only one step to recognize in law their status as civil servants. This step is taken in many cases. Thus in the central offices of the ministries a large proportion have already received the status of civil servants. A section of the pensions law of April 14, 1924, provides that

> in each ministry a regulation of public administration will determine within six months from the promulgation of the present law, the groups of personnel whose employments, whatever be their present qualification, are of a permanent character and who consequently should be granted the benefit of the regulations of the present law (law of April 14, 1924, Article 69).

In the administration of this rule a certain number of assistants have become civil servants.[1]

b) *De facto civil servants.*—By this term we designate individuals who at a given moment perform a public function without having been regularly appointed thereto, but acting, not as common usurpers, but apparently as real civil servants.[2] Although all the acts of these individuals are null, it is admitted that certain of their acts may produce results, and they are considered from certain points of view as civil servants. Thus the rules of public liability are applicable to these individuals (Article 25, decree of May 31, 1862, on public liability).

Scarcely any element whatever of public office is found in this second category. There remains a last group which is absolutely without any element of this character. This is temporary, or draft, labor.

c) *Draft labor.*—The procedure for drafting permits the state to secure for itself in certain cases foreseen by law contributions in kind or in work which are necessary to deal with urgent needs. The law of July 3, 1877, upon drafting, that of March 3, 1822, Articles 12 and 13, and the decree of January 4, 1896, on the maritime sanitary police, and Article 80 of the code of criminal instruction concerning witnesses contain regulations relative to the cases in which individuals can be required to give their personal services to the state, but these individuals do not acquire in any way the status of civil servants.[3] Their collaboration is exceptional, temporary, and above all compulsory.

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[1] Decrees of March 18, 1926, Ministry of Labor; April 24, 1926, Ministry of Public Works; June 1, 1926, Ministry of Foreign Affairs; July 31, 1926, Ministry of Agriculture; July 12 and August 12, 1926, Ministry of Colonies; August 20, 1926, Ministry of Commerce; August 25, 1926, Ministry of Justice and Ministry of Public Instruction.

[2] Cf. Gaston Jèze, *Principes généraux du droit administratif.* (2d ed.; 1914), pp. 441 ff.

[3] Gaston Jèze, *op. cit.*, p. 396.

From what has just been said it appears clearly that permanence is one of the essential characteristics of the status of civil servants.

It is useless, however, to push investigations upon the point of inquiring whether the nature of the employment must be taken into consideration. That is an element, in fact, always foreign to the problem. It matters little whether the employment is high or low; a simple messenger has just as complete a right to the title of civil servant as the director of a ministry. Writers have tried several times to establish a distinction between civil servants possessing a part of the public authority and persons and agents confined to duties of pure management (*exécution*). The first were called *fonctionnaires d'autorité*, or civil servants properly so-called, and the others were only *fonctionnaires de gestion*, or, in short, agents. This distinction, worked out by M. Berthélémy,[1] is no longer accepted today, either in jurisprudence or in theory. Inasmuch as within the body of civil servants no distinction can be established according to the nature of employment, *a fortiori* this element cannot be retained as a criterion separating civil servants and non-civil servants.

LEGAL SITUATION OF CIVIL SERVANTS

After having determined the characteristics by which one recognizes civil servants, it is necessary to define the nature of the bond which unites them to the public service. Several theories have been set forth on this subject.

It has been maintained that the civil servant is united to the public authority which employs him by contract analogous at all points to an ordinary work contract. But this theory, which was prevalent during a part of the nineteenth century, at a period when public law was not yet well established in France, is now completely abandoned.

In the opinion of some, civil servants and the public departments do not form contracts within the ordinary conditions of private law. Nevertheless there probably exists a real contract, a contract *sui generis*, an administrative contract.

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[1] Henri Berthélémy, *Droit administratif* (10th ed.), p. 49.

This thesis has been worked out by the council of state handling cases of an administrative character. It is discovered in numerous decisions in the conclusions of the government commissioners and in the works which have been inspired by administrative jurisprudence.

But in the course of recent decades a new theory has appeared. Its initiators have been jurists such as Esmein,[1] Hauriou,[2] Duguit,[3] Jeze,[4] and Rolland.[5] These authors maintain that civil servants must be considered as invested by the public authority with a status. The situation results, not from a free agreement of will between the two parties, but from a unilateral act of will on the part of the public authority.

Finally, Professor Berthélémy holds a fourth theory, by virtue of which we must distinguish between two categories of civil servants: some, *fonctionnaires d'autorité,* because they are holders of a part of the public power, would have this status, while others, *fonctionnaires de gestion,* wage-earners in the same condition as employees of private enterprises, would be connected with the public authority by simple contract.[6] This distinction, which used to present some practical advantages, is today completely abandoned.

At the present time among the theories which have just been summed up, there remain only the theory of administrative contract and that of status. Jurisprudence of the council of state is favorable to the idea of administrative contract, while theory in general supports the thesis of status. Fundamentally, the solution of this controversy after all does not have a very great importance. What really matters is to disentangle the essential features which differentiate civil servants from wage-earners of private enterprise.

1. In work contracts governed by private law the parties are, if not in fact at least in law, placed on a footing of equality and

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[1] Esmein, *Traité de droit constitutionnel.*

[2] Hauriou, *Précis de droit administratif et de droit public* (2d ed.; Paris, 1927).

[3] Duguit, *Traité de droit constitutionnel* (2d ed.), III, 95.

[4] G. Jèze, *Principes généraux du droit administratif* (Paris, 1914).

[5] Rolland, *Précis de droit administratif* (Paris: Dalloz, 1926), p. 50.

[6] Berthélémy, *Traité élémentaire de droit administratif* (10th ed.; 1923).

discuss freely the conditions of the contract, the employee or worker having the possibility of obtaining concessions from the employer. Applicants for a public office, on the contrary, cannot expect any modification of the rules fixed for the office.

2. In private law the contract is the law of the parties and can be modified only by common agreement. The status of the civil servant, on the contrary, can be modified by a unilateral act of the public power without creating a right to indemnity on account of modifications which might damage the interest of public servants.

The status of public office is the exclusive creation of public authority. It is important, therefore, to inquire how this authority proceeds in the establishment and organization of the public services.

THE ESTABLISHMENT AND ORGANIZATION OF PUBLIC POSITIONS

The organization of public services includes several series of acts on the part of the public authority: (1) Public authorities act first of all to create the positions. Having created the positions, they must then fix the general rules to which these positions are subject, and in a word must organize the public services. (2) Then only do the acts appear by which public authority designates the holders of the positions and sets up the regulations to govern their careers.

Acts of this second category as well as the first must all harmonize with general rules, but they have this peculiar feature, that their object is to apply to given individuals general pre-established rules. It is therefore logical to begin by studying the first category of acts concerning civil servants, that is to say, acts which create and organize public positions.

The procedures for the organization of public services in France are numerous and varied. This arises, not only from the fact that the public services include a group of civil servants dependent upon different public authorities, state, department, communes, public establishments, colonies; it arises also from the fact that for the state at least, and to a certain degree for the secondary groups, there exist several bodies of civil servants not having the same status. The lack of unity of status is, we may say, one of the characteristic features of the public service in France. Each office has one and sometimes even several categories of personnel different from those of other offices. We must not look for anything comparable to the English civil service or the body of civil servants of the German Reich. We find in France water-tight compartments between the personnel of the different services. It is however, possible to disentangle the general rules which govern the organization of the public services in France.

1. So far as the state civil servants are concerned, power is divided between two authorities, the government and parliament. In principle it is the president of the Republic who creates and organizes the different positions by means of decrees. In this task the chief of state is assisted by two groups of collaborators, the ministers and the council of state.

The co-operation of the ministers is obligatory in every case by virtue of the constitutional rule which requires that all acts of the president of the Republic be countersigned by one or several ministers.

The minister of the department to which are attached the positions to be created or to be organized takes the initiative in drawing up a proposal. If this proposal concerns several departments, the competent ministers are informed of it. The minister of finance must be consulted for all draft decrees having the effect of increasing the number and the salaries of state civil servants (law of February 25, 1901, Article 55, par. 1). Finally, the ministers must all participate in certain appointments; this is the case for the appointment of councillors of state in ordinary service who, by virtue of Article 4 of the constitutional law of February 25, 1875, are to be appointed by decree taken in the council of ministers.

The council of state participates also in the making of regulations concerning public positions. The government can always request its opinion without, however, being bound by this opinion. Sometimes examination by the council of state is obligatory. This is the case for the organization of the personnel of the central offices of the ministers (law of December 30, 1882, Article 16, and law of April 13, 1900, Article 35) and for the organization of the *cabinets*[1] of the ministers (law of July 13, 1911, Article 142).

The rôle of the president of the Republic is completely formal. He is limited in general to ratifying purely and simply the propositions which are submitted to him by his ministers with or without an examination by the council of state. Sometimes, moreover, the president of the Republic delegates a part of his powers to the ministers. These then possess a specific power of making regulations, which permits them at least to fix the details of the organization of the bodies of civil servants who are subject to their direction, within the limits in which the decrees of the head of the state may not have dealt with these points.

On the other hand, the legislative power, by virtue of the superior position with which it is invested by constitutional law, can call up problems of organization of the bodies of civil servants when these questions appear to it to deserve to be made the object of legislation. When parliament has expressed its will to legislate upon this subject, the executive power can no longer act by way of regulation.[2]

Occasionally parliament deals with questions which are before it as a whole; thus, for example, all military positions are governed by law. Sometimes parliament contents itself with laying down a certain number of general rules delegating to the executive power the duty of fixing the details of organization. Regulations made by the head of the state in execution of this requirement take the name of regulations of public administration, and to make them the intervention of the council of state is essential. Several authorities concur as has just been said in the establishment and organization of state civil servants. This multiplicity is not without its inconveniences. Jurisdictions become confused. Civil servants having analogous employments have quite different status. It would be much better, as is in fact the present tendency, to understand that parliament establishes the general framework, fixes the major lines of organization, and turns over to regulations of public administration the drafting of the detailed rules.

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[1] The term *cabinet* is not used in the Anglo-American sense by the French, but refers rather to the small group of political associates of the minister who stand between him and the permanent officials, on the one hand, and who, on the other hand, co-operate with him in his parliamentary duties.—EDITOR.

[2] Law of April 13, 1900, Article 35, para. 2, and law of June 25, 1920, Article 8.

2. What are the rules for establishing and organizing bodies of civil servants of secondary groups? The organization of the personnel of the departments[1] is determined by the departmental general council under the supervision of the state.[2] The number of civil servants exclusively connected with the departments is, in fact, very small. The majority of agents of the departmental public services are state officials put at the service of the department by the state; such is the case of the prefects, subprefects, direct tax collectors, etc. In fact, strictly speaking, there are scarcely any other departmental civil servants except the employees of the prefectures and the subprefectures. Moreover, so far as the latter are concerned the departmental authorities have recently had their freedom of action limited. A law of April 1, 1920, applied by regulations of public administration dated July 17, 1920, January 14, 1922, and September, 1925, has imposed a uniform status for all the departments.

So far as the communes are concerned, the mayor and municipal council possess in principle, making exception of general rules of supervision (*tutelle*), authority to establish and to organize municipal employment. But a recent trend of opinion analogous to that which has been felt in the case of the departments has brought the legislature to intervene in these questions. A law of October 23, 1919, modifying Article 88 of the law of April 5, 1884, imposes upon communes of more than 5,000 population the obligation to give to all their civil servants a status, including necessarily certain elements fixed by law and subjected to special rules of supervision. In case the communes fail to conform to these regulations within a period of six months after the promulgation of the law or the creation of the position, a decree of the prefect of the department makes

[1] I.e., the major geographical subdivisions of France.

[2] Law of August 10, 1871, Article 45.

obligatory within the commune a status of the type established by a decree of the council of state dated March 10, 1920.

The tendency which is extending the authority of the state over city officials is not yet completed. Parliament at the present moment is studying measures which if they are adopted will have for their effect to impose upon all the communes of France a uniform status for all their employees.

In so far as public establishments are concerned, in principle the administrative commissions of these establishments have power to establish and organize positions subject to the supervision of the higher authorities. This supervision is particularly effective for national public establishments, whose personnel is almost completely governed by rules put forth by parliament or by the head of the state.

The departmental and communal public establishments, on the contrary, have almost completely kept their autonomy from the point of view of their personnel. There exists, however, at the present time a growing opinion which seeks to obtain the intervention of the legislature; particularly employees of city hospitals and welfare institutions are gaining a uniform status. The legislature does not seem disposed to impose a uniform status upon all public departmental and communal establishments. Some measures, however, have been taken by the government to try to secure from the administrative boards the adoption of a single system for their personnel.

Finally, a word must be said about colonial civil servants. There are two categories of colonial civil servants. Some are state civil servants sent out from the metropolis into the colonies. These civil servants are subject to the same authority as other state officials. Other colonial officials are a part of the local system peculiar to each colony. These officials in principle are dependent upon the local authorities, that is to say, the governors assisted in certain cases by representative bodies when they exist. But even there the influence of the state makes itself felt. The president of the Republic who, so far as colonies are concerned, is endowed with a true legislative power; parliament which, in spite of the legislative competence of the president, can always call before it any matter whatever; finally, the colonial minister—all participate in the establishment and organization of the colonial systems.

A clear distinction must be made between colonial officials and officials in the services of protectorates or mandated territories. In these countries we find, on the one hand, French civil servants depending exclusively upon the metropolis, for example, the official representative of France, the military officials; and, on the other hand, bodies of French or native civil servants, but nevertheless depending solely upon the local authorities, that is to say, the native authorities, assisted as the case may be by the French representative. But these officials, properly speaking, are not included in the number of French civil servants, and in this study we shall not speak of them.

After having inquired how the public services are established and organized, it is important to examine how these general rules are applied to the individuals who occupy these positions.

RECRUITMENT OF CIVIL SERVANTS

Recruitment is an operation by means of which individuals become holders of public positions. This operation includes three stages: (1) the determination of the prerequisites for public positions; (2) assignment to duties; (3) entrance upon duties.

A. CONDITIONS OF APTITUDE

The conditions which an individual who is a candidate for public office must fulfil are of two types: some are primarily of a psychological character, while others are of a professional order.

1. *Psychological standards* (*aptitude morale*).—One of the great principles which dominates French public law is that of the admissibility of all French persons to all public positions.[1] The logical consequence of this principle is that only a minimum of restrictive conditions are required of candidates for public position. Since the advent of the republican régime, the oath of political loyalty has been suppressed. One exclusion of a political nature still exists; it is directed against members of fami-

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[1] Constitution of November 4, 1848, Article 10.

lies having reigned in France, who by virtue of Article 4 of the law of June 22, 1886, can hold no public office. There are no other conditions of this sort. So far as religion is concerned, freedom of conscience is guaranteed. It is necessary to note, however, that ministers of the different cults cannot teach in the public primary and secondary schools, not by reason of the religion which they profess, but by reason of their status as ministers.[1]

a) The principal public positions are reserved for French citizens. There are a few cases in which foreigners may become French civil servants; thus, for instance, foreigners are admitted into that section of the French army which carries the name of "Foreign Legion," and foreigners may be appointed French consul abroad. They are likewise admitted as professors of living languages.

But possession of French nationality is not sufficient. It is also necessary, at least for the public positions of the metropolis, to be a citizen. This condition excludes a certain number of natives of the colonies who, while owing allegiance to the French Republic, do not enjoy the same civic rights as citizens.

By way of contrast, the question of color or race or religion is never taken into consideration.

b) The majority of public positions are still reserved to candidates of the masculine sex. Women are frequently admitted in a rather large number of units, but, in general, they do not have access to the positions which include the exercise of extensive authority; thus, for example, judicial functions are forbidden to them.

c) In principle, candidates must have satisfied their military obligations. The sole purpose of this condition is to exclude individuals who have been relieved of the obligatory military service required for all French citizens of the masculine sex who are not expressly exempted by law. There are always some public positions to which candidates may be admitted provisionally before having completed their military service; such is the case of the supplementary positions in the direct tax service and certain positions in the postal and telegraph service.

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[1] Council of state, May 10, 1912; Bouteyre, *Recueil des arrêts*, p. 353; and the conclusions of the government commissioner, council of state, July 30, 1920, *ibid.*

d) In order to enter the public services one must fulfil certain requirements as to freedom from judicial action. Certain judgments involving the loss of all or a part of the civic rights prevent admission to public positions (penal code, Articles 34, 42, 43, 123, 166, 167, 174, 175, 183, 187, 197). This is why every candidate for public position is required to produce a copy of his judicial record.

Sometimes mere lack of conviction for serious offense is inadequate. In certain cases the authority charged with recruiting civil servants may determine in its own discretion whether the moral standard of the candidate is sufficient. Thus the law of January 30, 1923, permits the minister to eliminate undesirable candidates for the position of judge.

e) The most strict causes of elimination are the incompatibilities of one office with another. A certain number of public offices are incompatible with other public duties. These incompatibilities are particularly effective in preventing the combination of a public position with an elective position in the same area. Outside of this case prohibitions of this order are not very numerous.

2. *Conditions of professional skill.*—Candidates for public office must have the necessary capacity to fulfil the duties to which they aspire.

They must first of all conform to the necessary physical standards. Age requirements permit the elimination of candidates too young or too old. In general, the age minimum is twenty-one years, the age maximum, thirty years. But these limits are extended or restricted in many cases. On the other hand, all candidates are required to be free from any physical defect which would prevent them, once appointed, from carrying out their duties. To insure this, candidates are subjected to rigid medical examinations. There is, however, a category of candidates for whom special medical examinations are permitted. These are ex-service men of the war of 1914–18, beneficiaries of the law of January 30, 1923, dealing with reserved positions. Medical examination of these individuals, for the most part afflicted with infirmities contracted in the course of the war, is carried out with particular care and includes very important guaranties for the men concerned.

Along with satisfactory physical condition, the candidate for the civil service must possess an adequate intellectual endowment.

The necessity of evaluating the intellectual capacity of candidates for public positions raises a very delicate problem, which has been solved in different ways for the majority of the bodies of civil servants.

Sometimes the capacity of the candidates is tested directly and arbitrarily by the authority charged with appointment. Such is the case, for example, of the prefects and subprefects chosen at the free discretion of the government. Such is also the case of members of the "cabinets" of the ministers, freely chosen by the latter; communal officers without status; finally, and above all, elective officers.

Usually the intellectual capacity of candidates is determined by means of standards which are imposed in a more or less absolute manner upon the authority responsible for making appointments. The procedures employed in this respect, which are often combined, are the following: (*a*) verification of possession of certain diplomas or fulfilment of certain services; (*b*) nomination by qualified persons; (*c*) success in certain tests; (*d*) fulfilment of a probationary stage.

For almost all public positions the possession of certain diplomas is required, the nature of which differs according to the nature of the positions and which guarantee that candidates have a sufficient general education; namely, certificate of primary studies, *brevet simple* or *brevet supérieur*, *baccalauréat de l'enseignment secondaire*, university diplomas. It is to be noted that certain diplomas granted by non-public teaching establishments are sometimes admitted on the same footing as diplomas granted by public teaching establishments. This is the case, for instance, with respect to the diploma of L'Ecole Libre des Sciences Politiques, which gives access to a certain number of public positions.

For many positions, after having given evidence of an adequate general education, candidates must also demonstrate that they possess additional technical knowledge which permits them to adjust themselves rapidly to the office to which they aspire. In order to guarantee that this condition is fulfilled, several procedures exist. In some cases cognizance is taken of prior service; thus the justices of the peace can be appointed from among individuals who have carried on certain professions for a certain length of time (law of July 12, 1905, Article 19, modified by laws of June 14, 1918, and April 18, 1924). By virtue of Article 90 of the law of July 13, 1911, individuals having performed public duties during at least ten years fulfil the qualifications for position as *maître des requêtes* in the council of state. Another method consists in presentation to the appointing authority of one or more candidates; thus professors in the Collège de France, those of the Muséum d'Histoire Naturelle, of the Ecole des Chartes, of the Ecole des Langues Orientales Vivantes are appointed from lists presented by the professors of these establishments. We must also include these cases: civil servants who are appointed, on nomination of an individual, as ministerial offices, pastors in Alsace Lorraine, and gamekeepers.

But usually technical skill of candidates is determined by the results of an examination or competition.[1] These guaranties grow out of rules which bear upon the following points: determination of a program of competition, establishment of a jury to direct the examinations, determination of procedure of the examination, fixing the dates, designation of candidates admitted to the examination, organization of prescribed tests as well as of the results.

For each body of civil servants recruited by this procedure, the rules of the competition vary, but in a general way we may say that the rules guarantee a satisfactory equality between candidates and permit the best-qualified individuals to be chosen. The influence of these examinations, where they exist, is therefore considerable. It is felt from two points of view.

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[1] On this question see Sibert, *Le concours juridique de recrutement de la fonction publique* (Paris, 1912); G. Jèze, "Le régime juridique des concours de présentation," *Revue de droit public* (1909), p. 699; G. Jeze, *Principes de droit administratif* (3d ed.).

In the first place, when a competition is prescribed it must take place within the conditions fixed by law or regulations beforehand. Every violation of these legal conditions on the part of candidates, on the part of the selecting jury, and even on the part of third persons, involves not merely the nullity of the competition, but also of the subsequent operations of appointment. There exists, moreover, a jurisdictional control of the examination.

On the other hand, the examination when it is passed according to the prescribed rules has a legal validity which must be respected by the authorities who direct the public service. The examination gives in order of merit a list of candidates qualified to fulfil a given function. Inclusion upon such a list does not give, except in a few cases, the absolute right to be appointed upon a given date to the position concerned. But it obliges the appointing authority to take persons from this list so far as necessary and in the order established by law. Every appointment made in disregard of the results of the examination is therefore irregular. On this point also there exists a jurisdictional control.

Along with the examination procedure we must consider nomination by the commissions in charge of classification for positions reserved to veterans (law of January 30, 1923, decree of July 13, 1923). Sometimes examinations and competitions are combined with probationary periods.

More and more we are seeking to train future civil servants in specialized schools. Without considering the military schools where the officers and subalterns of the army and navy are trained, there are numerous civil schools: Ecole des Ponts et Chaussées, Ecole supérieure des Mines, Ecole supérieure des Postes et Télégraphes, all establishments for the training of engineers; Ecole normale supérieure, for the training of professors of secondary and higher education, normal schools for the training of primary teachers, Ecole des Chartes, for the training of paleographic archivists.

Probationary periods still exist for some positions. Thus the civil servants in the direct and indirect tax services who before being appointed, must have passed several years as probationers; likewise there exists a probationary period in the finance inspection corps; finally, in many municipal positions probation is required.

B. ASSIGNMENT TO DUTIES

Assignment to duties is the act by which the competent authority indicates to the candidate whose competence has been determined the position which he is to occupy in the body of civil servants. But the form of this act of investiture varies according to whether the competent authority is an individual or a group of individuals.

1. Assignment to a public position by a group of individuals takes the name of election. This process, very extensive in Anglo-Saxon and other countries, is infrequently used in France. For example, we may cite mayors and assistants in the metropolitan territory, with the exception of the mayors of the *arrondissements* of Paris, judges in the commercial courts, members of the court of conflicts.

In the case of election, the designation of the holder of the position arises from the proclamation of the results of the counting of the ballots, excepting a possible appeal to the competent jurisdiction.

2. Most civil servants are appointed by a single individual. For this process is used the term "nomination." Three conditions must be fulfilled for such appointments to be valid: (*a*) competence of the authority which appoints; (*b*) conformity to the rules of appointment when the selection is not discretionary; (*c*) publicity with regard to the appointment.

a) *The authority which appoints must be competent.*—The rules of competence vary according to the groups of civil servants.

1. In principle the president of the Republic appoints state civil servants by virtue of Article 3 of the constitutional law of February 25, 1875. But for certain subordinate positions the power of appointment belongs to the ministers, and even

in the departments to the prefects, regional representatives of the ministers.

2. For departmental civil servants the prefect has the power of appointment.

3. In the communes by virtue of Article 88 of the law of April 5, 1884, the mayor appoints to all positions for which other methods of appointment are not prescribed.

As an exception to the power of the mayor we may cite the rural police and the municipal police who, appointed by the mayor, must also be approved by the prefect or subprefect (law of April 5, 1884, Articles 102, 103, amended by Articles 49 and 50, decree-law of November 5, 1926). In addition, the appointment of municipal tax collectors and auditors of municipal funds completely escapes the mayor (Article 156, law of April 5, 1884, amended by the law of June 22, 1923).

4. In the case of public establishments there are administrative commissions or councils, as the case may be, which make the appointments.

5. In the colonies appointments of the local civil servants are made by the governors.

b) The authority which appoints rarely possesses discretionary power.—Even when he has the power to determine the competence of candidates himself, he is obliged to take account of certain criteria, university titles, requirements of age, sex, nationality, etc. But particularly in the case of competition or nominations by professional bodies, the power of the appointing authority is limited. The head of the service cannot appoint in disregard of the results of the investigations of bodies charged with determining the competence of candidates. The head of the service, however, is never obliged to make an appointment at a given moment, and, above all, he is never obliged to make appointments unless there is a position to be filled.

c) A certain degree of publicity is required for the appointment of civil servants.—This publicity includes two stages:

1. It is directed first of all to the appointee himself and takes the name of notification.

2. It is directed toward third parties, and in this case has for its object not only to give guaranties to the candidates selected,

but also to avoid usurpation of power, or to detect the same. The notification of the civil servant takes place by giving him a copy of, or an extract from, the act of appointment. Publication results either from inserting the act of appointment in an official publication or by verbal proclamation. So far as the state is concerned, publication always takes place by insertion in the *Journal officiel* or in the *Bulletin des lois.* In addition there exists in each ministry an official publication which reproduces, on the one hand, items in the *Journal officiel* of interest to the department in question, and, on the other hand, appointments made by ministerial act which are not published elsewhere.

So far as the departments are concerned, appointments of civil servants are inserted in the *Recueil des actes administratifs de la préfecture.* So far as the communes are concerned very few possess an official and periodical publication; Paris and Lyons have official bulletins. Publication of appointments takes place by being posted in the city hall. When the status of municipal employees requires this, publication may take place in the official publication of the prefect noted in the foregoing.

Posting on the bulletin boards also is the only possible procedure for public establishments. In the colonies there exist official publications which permit the publication of appointments.

C. ENTRANCE UPON DUTIES

It is not sufficient for civil servants to be appointed. They must actually take possession of their positions. In general, entrance upon duty is a question of fact pure and simple. Sometimes it is subordinate to certain conditions and accompanied by more or less solemn formalities.

1. So far as the prior formalities are concerned, some civil servants have to give bond; this applies in principle to all civil servants who handle public funds, who can enter upon their duties only after having deposited their bonds.

In case of incompatibility a civil servant can enter a position only after having resigned from the position which is incompatible.

2. So far as the formalities concurrent with taking up work

are concerned, they are not required, whether under the name of investiture or installation, except for a small number of civil servants and these generally among the higher ranks: members of the council of state, of the court of accounts, magistrates, prefects, subprefects, and colonial governors.

RIGHTS AND OBLIGATIONS OF CIVIL SERVANTS DURING SERVICE

Public position, whether characterized as rising from administrative contract or as presenting a situation of status, implies for the administration and for the civil servant during the course of the latter's career reciprocal rights and obligations. These rights and obligations as well as the guaranties and sanctions which derive from them must be studied.

A. THE OBLIGATIONS OF CIVIL SERVANTS

The duty of the civil servant consists essentially in devoting his work to the public service. He cannot content himself with going through the motions of work like an ordinary worker, who goes off when his task or his day's work is finished and has no connection with his employer outside the hours spent in the shop. The civil servant is attached body and soul to the public service. The status of civil servant does not leave him for a single instant even when distant from his office. From these principles arise a certain number of rules which characterize the obligations of the civil servant with regard to the administration.

1. The civil servant must carry out effectively and personally his duty; he cannot secure a substitute as in private affairs. He can only in certain very limited cases delegate a part of his duties to other civil servants.

2. A civil servant must carry out his duties without interruption. To insure this he must first of all live in the neighborhood where his office is located. In addition he cannot be absent without permission. The question of sick leaves or personal leaves is regulated by each group in a rather strict fashion.

3. The civil servant should devote his whole activity to the public service. He cannot carry on another profession, and

above all he ought not to engage in commercial activities, and he cannot secure an interest in enterprises which it is his duty to supervise without severe penalty.[1]

Many statutes, moreover, define particularly the occupations which are forbidden to civil servants, but even outside the text of these laws the principle of the complete subjection (*asservissement*) of the civil servant is sufficiently strong to authorize the administrative heads to forbid to their subordinates every activity which would seem to them harmful to the posts which they occupy. It is, of course, permissible to the civil servant to be occupied with his family interests. But even there his freedom is limited, because certain civil servants, such as officers and agents of the diplomatic corps, do not possess the right to marry without prior authorization.

4. The civil servant must perform his duty not only punctually but zealously. He must maintain the greatest discretion upon what he observes in the service. The rule of professional secrecy binds him.

5. The civil servant is obliged to obey his superiors. Discipline is one of the essential conditions of the good operation of the public service.

6. The civil servant may be called upon to act even outside his ordinary field of action in an exceptional case, as, for example, when he is designated by a valid requisition. As an example of the requisition, we may cite that which may be directed by the civil authorities to the armed forces, and those which may be directed against public accountants.

B. THE RIGHTS OF CIVIL SERVANTS

In exchange for services which he furnishes to the public, the civil servant has a right to a certain number of advantages. Some are of a material nature; others are of a psychological order.

1. Some civil servants perform their duties gratuitously. Some are paid by individuals (ministerial offices). But the majority

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[1] Article 175 of the penal code completed by the law of October 4, 1919. It is to be noted that the prohibition of these sections continues five years after the close of the official position.

receive from the public authority which they serve payments which are intended to permit them to meet their needs and the needs of their families.

The scales and the method of payment of these salaries are not the same for all officials. In general, the payment is definite. The scale is fixed for the whole year but is payable by twelfths at the end of each month; this kind of a payment takes the name of *traitement*. For some subordinate positions like auxiliaries of the central offices, there exist payments fixed by the day or the week. Some civil servants receive generally, however, in addition to a fixed salary, variable payments called allowances (*remises*); this is the case of several classes of accountants, such as the registrars of mortgages. Finally, some types of work performed by civil servants outside their normal duties are paid by commissions.

In addition to their salaries, wages, or allowances, civil servants have a right to certain subsidiary payments which are turned over to them on several bases, in general to take account of supplementary expenses which are imposed upon them by reason of their duties. Thus the prefects and the subprefects receive under the term *fonds d'abonnement* sums designated to cover the expenses of their office and upkeep. Diplomatic agents have expense accounts. Some naval officers, who while at sea are obliged to furnish subsistence for their subordinates, receive table expenses. But the most common supplementary payments are the allowance for residence and for children.

Residence allowances are sums which are paid to civil servants varying with the cost of living and place of residence and intended to equalize as far as possible the cost of living among civil servants residing in different localities. Colonial civil servants have a right to special payments which take account of the particular difficulties of their positions.

Allowance for children proceeds from the same principle. It is desired to equalize as far as possible the situation of civil servants by coming to the help of those who have children. All these financial advantages are subjected to common rules as to the terms according to which they are paid or are entitled to be paid.

In the first place they must be fixed in advance for all civil servants of a given group. So far as the state is concerned, it is sometimes parliament, sometimes the head of the state, who fixes the scale of payments. But as it is always parliament which furnishes the government, in the form of credits established in the finance law, with the necessary funds for the payment of civil servants, so it is in reality parliament which controls the financial situation of civil servants. In so far as the departments are concerned, it is the general council; for the commune, the municipal council; for the public establishments, the administrative boards at their head; or the supervising authority for the colonies, the colonial ministers, the governors, and, in some colonies, representative assemblies.

To qualify for the payment of a salary, or a supplement to salary, a civil servant must certify to services performed. It is only the exception when money is paid without service having been performed. State civil servants have a right to sick leave or other leave with full or part payment of salary within the conditions fixed by regulation (decree of November 9, 1853, Article 16). In addition certain civil servants *en disponibilité* receive a salary.

It must be noted also that the salaries of civil servants are paid to them after withholding the necessary amounts for retiring pensions, and also, if necessary, any disciplinary fines.

Finally, salaries are, in part, not subject to lien. This privilege is intended to guarantee civil servants necessary living expenses (law 21 ventôse, year 9, and January 12, 1895).

2. In addition to these financial advantages some civil servants have advantages in kind, soldiers and officers receiving articles of clothing. Officers have orderlies at their disposition. All soldiers have the right to travel on the railroads. Colonial civil servants receive reductions in the expense of their journeys and those of their families. But the most sought after of these advantages in kind is quarters. Few civil servants, however, possess quarters. The principal groups are prefects, subprefects, soldiers who are not officers (excepting certain married underofficers), school teachers, and in all departments civil servants charged with watching premises. The occupation of

quarters by civil servants is, moreover, surrounded with precautions intended to avoid abuses.

3. The material gains secured by civil servants are not fixed for the whole course of their career. They increase by means of promotion. Increases also arise, not only when a civil servant is promoted from one grade to a higher grade, but also in the course of the period passed within a single grade. There is provided generally for each grade a certain number of classes or ranks of salary to which civil servants are successively raised according to the rules provided for advancement.

Promotion gives civil servants both a material and psychological gain. On the one hand, its effect is to increase the financial resources of the civil servant, and, on the other hand, it is a source of prestige for him.

Promotion is one of the most prized advantages of civil servants, and gives rise to the most numerous difficulties. That is why it has been necessary to give guaranties to civil servants, which will be studied later.

4. Civil servants also enjoy certain advantages of a purely psychological nature. They can first of all make use of their title of civil servant in the daily events of life, which gives them a certain standing. However, they must avoid using their official title for a lucrative purpose; recent examples have shown the difficulties which may arise for the public services from the fact that names of civil servants followed by their titles appear in circulars or advertisements of financial firms.

Some civil servants, such as officers of the army and navy, have a kind of property right in their title. Hence arises the usage of preceding the name of persons holding a given grade by the title of the grade which they hold. A special point of interest concerning the grade of marshal of France which is worth noting is that the wife of a marshal has by the virtue of constant usage the right to be called "Madame la maréchale."

Some groups of civil servants who are no longer in active service may secure an honorary title, but an honorary title is never a right. It is granted or withdrawn at the discretion of the higher authorities.

5. Civil servants have certain honorary prerogatives, as uniform or insignia, place of honor at ceremonies, decorations (but not titles of nobility), and especially appointment to the Legion of Honor.

6. There exist rules intended to insure respect due to public office and to those who are holders thereof.

a) Illegal intrusions in public offices committed by individuals who have not or who no longer have the status of civil servants are severely punished (penal code, Articles 258, 259, etc.).

b) Civil servants are protected personally against insult, injury, violence, and defamation. Articles 222 *et seq.* of the penal code punish injuries and violence against civil servants in the discharge of their duties or when engaged on duty; Articles 31 *et seq.* of the law of July 29, 1881, punish defamation and insults appearing in the press with regard to civil servants connected with their public duties. Articles 11 and 91 of the code of civil procedure punish insults and lack of respect toward magistrates in the discharge of their duty.

7. Civil servants have privileges of jurisdiction. Members of the army and navy on active service are subjected to special jurisdictions. Magistrates and generals in command of divisions or subdivisions are in case of delinquency brought directly to the court of appeal (code of criminal instruction, Articles 479 *et seq.;* Articles 483 *et seq.;* law of April 20, 1810, Article 10). Judicial officers, judges and officers of the judicial police, are protected by provisions of the civil code of procedure relative to actions against them.

Finally and above all, with regard to damage (*dommage*) caused to individuals by civil servants in the discharge of their duty, civil responsibility of civil servants cannot be enforced unless the act causing damage is a personal fault separable from the service. In the case of fault of a civil servant responsibility falls upon the public authority.

8. Do civil servants possess the right of association? This question has been very widely discussed for a very long time and has never yet been settled in a definitive way. Legislation

is almost silent; the law of July 1, 1901, which constitutes the charter of associations, contains no provision concerning civil servants. As for the law of March 21, 1884 (amended by the law of March 12, 1920), on professional unions, it refers to civil servants in Article 9 only to declare that "a special law will fix the status of civil servants." This law has not yet been enacted.

In the absence of written provisions, a sort of custom has developed which governs temporarily the rights of civil servants in the matter of association. This custom arises from three sources: jurisprudence, theory, and administrative practice.

Of these three sources jurisprudence is the most important, the most significant, and that which comes closest to written law. Both the administrative courts and the judicial courts are unanimous in defining the rights of civil servants by means of the two following rules.

a) All civil servants within the conditions provided by the law of July 1, 1901, can form associations having for their object the study and defense of the interests of their career (council of state, December 11, 1908, Association of Employees of the Colonial Ministers, S. 1909, 3.17; court of cassation, March 4, 1913, D.P. 1913, 10121; council of state, November 21, 1923, Association of Civil Servants of the Department of Posts, Telegraphs, and Telephones, D.P. 1924, III, 7–15 June, 1923; D.P. 1924, I, 153).

b) Civil servants cannot organize unions (*syndicats*) (council of state, January 13, 1922, National Trade Union of Agents of Indirect Taxes, D.P. 1923. 3.33; council of state, January 20, 1925, Trade Union of the Paris Octroi; court of cassation, March 4, 1915, and June 15, 1923).

Most authors approve this jurisprudence thus established with regard to associations of civil servants.[1] There exists, however, some disagreement. Some writers find the right of association too extensive.[2] Other authors reflect an important part of public opinion which demands the right to form civil service unions as well as associations. These authors recognize that in the actual state of legislation unions are illegal, but they indicate that, from the point of view of principles of public law, nothing would prevent civil servants being authorized to form unions within conditions compatible with the operation of the public services.[1] It is undeniable that there exists a strong movement in favor of civil service unions. In almost all bodies of civil servants, except among the magistrates and the army and navy and in the central offices of the ministries, unions exist in fact. At the beginning these unions were prosecuted, dissolved by the courts, and their members subject to punishment, but, after 1924, the harshness of the administration weakened. Unions were no longer disturbed. The authorities have even maintained through the orders of higher authorities quasi-official relations with the union leaders.

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[1] Hauriou, *Droit administratif* (1st ed.), p. 600; Duguit, *Traité de droit constitutionnel* (2d ed.,), III, 217.

[2] Esmein, *Droit constitutionnel* (7th ed.), p. 621; Larnaude, *Bulletin de la Société d' Etudes Législatives* (1911), p. 271, and (1913), p. 164; Chaulgrin, *Note Sirey* (1912), 2.1; Berthélémy, *Droit administratif* (1923), p. 58.

What is more serious is that the civil service unions, instead of limiting themselves to defending their corporate interests within the service, have a very violent external policy. They are almost all affiliated with workmen's trade unions and adherents of the Confédération Générale du Travail. They take part in political struggles. This state of things cannot endure without running the risk of seeing anarchy in the public services. The solution generally foreseen would involve legislation which would create for civil servants a type of autonomous organization intermediate between the union and the association.

THE POWERS OF THE ADMINISTRATION AND THE GUARANTIES OF CIVIL SERVANTS

Given the rights and obligations of civil servants, it is necessary to inquire how the administration can secure fulfilment of duty by civil servants, and how, on the other hand, civil servants can have their rights respected.

A. POWERS OF THE ADMINISTRATION WITH REGARD TO CIVIL SERVANTS

The personnel of the public service is a hierarchy in the sense that all civil servants of each grade depend upon a higher official. The officials who are at the top of the pyramid themselves depend upon the government. The purpose of this organization is to permit unity of direction. Higher civil servants, however, do not have an unlimited authority over their subordinates. This fact makes necessary an examination of the powers which they possess.

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[1] L. Rolland, *Droit administratif*, p. 78; Cahen Salvador, "Les fonctionnaires," *Revue politique et parlementaire* (1926), vol. 129, p. 315.

The powers of the heads of service are the following: power of direction, *pouvoir hiérarchique*, power of control, and the disciplinary power.

1. *The power of direction.*—This power permits the head of the service to employ the civil servants to the best public interest. The authority gives orders to the civil servants and they, bound by their duty of obedience toward their hierarchical superiors, must execute them. The orders which the competent authority can thus give are either orders of a general nature binding several civil servants (instructions, circulars) or individual orders.

This power of command permits the administration not only to give to the civil servant the daily task in which he is employed but permits it also, within limits fixed by laws and regulations, to shift employment, that is, transfer in the interests of the service is perfectly legitimate. The hierarchical power permits the administration to encourage and reward civil servants by material and psychological advantages, such as promotions, decorations, etc. The administration can also terminate the career of a civil servant when it believes him no longer able to serve or when the latter asks for the termination of his service. This is either retirement or suspension (*la mise en réforme*). Finally, at times the administration is obliged to retire a civil servant for lack of employment. This is *licenciement.* The area of the hierarchical power is therefore very extensive. Experience has shown that if no limit is placed upon the exercise of this power by the authorities responsible for directing the services, abuses take place. That is why the attempt has been made to protect civil servants against these abuses by giving them guaranties which we shall examine after having studied the other powers of the administration.

2. *The hierarchical power and the power of control.*—The head of the service not only has the power to direct the civil servant; he has the power to revise those acts which seem to him irregular or even merely inexpedient. It must be observed at once, however, that the acts of judges can be amended only by their hierarchical superiors. There exists, indeed, a control of the acts of judges, but it is a jurisdictional control. But if the administrative control is exercised over the acts of all civil servants except judges, the authority is not exercised in the same way over all civil servants. Only the officers of the central departments are subjected to a discretionary power which takes the name of *pouvoir hiérarchique*, and which allows the heads of the service to annul and to do over all acts of their subordinates, provided, however, that the heads of the service themselves conform to the laws and regulations. On the other hand, with regard to the decentralized officials, such as mayors, the higher authority can only exercise a control related to the legality of acts, and, with some exceptions on their expediency, and with regard to which the only penalty is annulment. The higher authority does not have the power of correcting the acts of this group of civil servants. It can, however, sometimes substitute its action for that of the official in case of insolvency of the latter.[1]

3. *The disciplinary power.*—This power permits the administration to correct errors and to punish faults committed by civil servants. The disciplinary power is the necessary complement of the hierarchical power; to order is nothing if one cannot punish.

The penalties which the authority may inflict by way of the disciplinary power are different in their purpose, in their nature, and in the method of application from the judicial penalties which can sometimes be cumulated with the disciplinary penalties. Judicial penalties correspond to an idea of justice. Disciplinary penalties are established in the interest of the good conduct of the public service.

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[1] See particularly Articles 85, 98, 99, 152 of the law of April 5, 1884. On this question see Jèze, *Principles de droit administratif* (the operation of the public services), p. 152.

Judicial penalties affect the civil servant with respect to his person and even with respect to his property. Disciplinary penalties only affect the civil servant with respect to his professional interests. Finally, while judicial penalties can be imposed only by the competent courts, the disciplinary penalties are imposed by the authority which directs the public service.

The disciplinary power is thus a rapid and efficacious means of repressing faults of civil servants for which there exist otherwise in many cases no judicial penalties, or for which judicial action would be too slow. The operation of judicial prosecution is reserved for cases that necessitate serious penalties which only a judge can impose; for example, cases of extortion, usurpation of power, etc. There are, however, some cases in which there may be a combination of judicial prosecution and administrative penalties.

Judicial prosecution of faults committed by officials is very severe, but it is organized according to procedure and rules which give important guaranties to civil servants.

The exercise of the disciplinary power, although less severe in principle, since it can affect the civil servant only in his professional interests, is also more arbitrary. In order to avoid abuses, some have thought to organize the operation of the disciplinary power in such a way as to restrict it within exact limits. It is, moreover, not only the disciplinary power which has thus been regulated. The power of direction and, although in a more limited measure, the power of control have likewise been the object of restrictions.

B. GUARANTIES OF CIVIL SERVANTS

Guaranties conferred upon civil servants against arbitrary action by the administration vary greatly. Certain corps, such as those of the prefects and subprefects, have only an imperfect and inadequate protection. Some guaranties are derived from the law; others are derived from regulations; in general the guaranties of civil servants include as a minimum two essential points, promotion and discipline. Sometimes to these guaranties is added a further right of collaboration in the direction of the public service.

1. *Promotion.*[1]—So far as promotion is concerned, we can disentangle the following rules which are found in most bodies of civil servants:

a) It is necessary to distinguish between promotion and advancement. The purpose of promotion is to give a civil servant a more important position and more extensive authority in the body to which he is attached. Advancement has for its purpose to give a civil servant a higher salary without granting him higher classification.

b) A first limitation upon discretionary power of promotion is found in certain conditions of age or length of service or aptitude. Thus no one can be appointed councilor of state unless he is forty years of age. In the army the minimum time for promotion to the grade of lieutenant is two years' service in the grade of sublieutenant.[2] Finally, there is sometimes required from candidates for promotion success in examinations testing special skills (inspectors of registration, decree of July 27, 1912, Article 79; naval commissioners, law of March 14, 1929, Articles 59 *et seq.*).

c) Independently of these minimum conditions for access to a higher grade, three factors may come into play: competition, discretion (*choix*), and seniority.

In general, advancement takes place only by seniority; there exist, however, some exceptions (prefects and subprefects, particularly). So far as promotion is concerned, the procedure varies; for example, for members of the council of state promotion is made by discretion. It is the same in the army for all grades higher than that of battalion or squadron chief (Article 14, law of April 14, 1832). Some grades like that of army lieutenant are given exclusively on the basis of seniority (Article 12, law of April 14, 1832, amended by the law of March 26, 1891). Finally, in certain cases discretion and seniority are combined. For certain grades a fixed proportion must exist between promotions made on the basis of discretion and promotions made on the basis of seniority (Articles 12 and 13 of the law of April 14, 1832, amended by the law of March 26, 1891).

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[1] On this question consult Georgin, *L'Avancement* (Paris, 1912); Jèze, *Théorie générale de la fonction publique* (Paris, 1924), p. 208; Chardon, *Les fonctionnaires du gouvernement* (Paris, 1908); and *Le pouvoir administratif* (Paris, 1911).

[2] Law of April 14, 1832, Articles 5 *et seq.*

d) Seniority is a factor which is imposed upon the head of the department, who is limited to determination of the length of service of the civil servants and corresponding right of advancement. In principle, only time of active service passed in the organization concerned is counted. An important modification, however, is made in this rule for ex-military men entering upon civil duties. Article 7 of the law of April 1, 1923, prescribes that civil servants will benefit by a seniority rating equal to the duration of their military services for promotion purposes. The application of this rule is, however, very difficult and has given rise to much litigation.

e) In principle, when a promotion takes place by discretion, the head of the service can select the officer whom he thinks most suitable, provided that this officer fulfils the minimum conditions of age, of length of service, and of skill which may be required for the promotion in question. But the discretionary character of the selection has been limited by the establishment of promotion lists. This promotion list is generally drawn up at the beginning of each year and indicates the civil servants who are subject to promotion by discretion in the course of the year. The fact of being inscribed upon this list confers upon no civil servant the right to automatic promotion. The existence of a list has for its purpose to oblige the head of the service to promote only civil servants included in the list. The promotion list constitutes the guaranty against arbitrary action by the head of the department. In addition, it aids him in this singularly delicate task. In fact, generally speaking, the promotion list is drawn up by the head of the department assisted by a certain number of his subordinates. Sometimes even the promotion list is drawn up and promulgated by a committee of civil servants without the head of the department having power to modify it (decree of July 21, 1927, concerning promotion of magistrates). In these conditions it may be understood that promotions made from the promotion list generally receive the approval of the body of civil servants.

The promotion list is an excellent institution. Although it is in operation today in a large number of groups of civil servants, no general text makes it obligatory for all civil servants whatever they may be. In addition, the rules for making a promotion list and the legal effects thereof vary between different bodies. Army officers and magistrates have the most improved form of promotion lists, which have been established mainly by law.[1] In the central offices and with some exceptions in the external services promotion lists, when they exist, have been established and may be modified by decrees of the head of the state. Thence one of the causes of inequality of promotion prospects for different groups of French civil servants. It would be very desirable to secure a law to co-ordinate and unify the rules governing promotion lists. Awaiting the intervention of the legislator, the judge, as will be shown here, disentangles from the diversities of legislative texts and regulations certain principles which are imposed upon all heads of departments and has thus commenced the task of unification of the régime of civil servants.

2. *The disciplinary régime.*[2]—The guaranties that are given to civil servants in the matter of discipline present almost as much variety as the guaranty with regard to promotion. One general rule alone is applicable to all civil servants without distinction; this is the presentation of the record to a civil servant threatened with disciplinary action (Article 65 of the law of April 22, 1905). Other guaranties result from laws or regulations fixing the status of each body of civil servants.

In general, the disciplinary guaranties relate to the following points: (*a*) scale of penalties; (*b*) authorities responsible for imposing penalties.

a) The scale of penalties includes ordinarily two types: on the one hand, lesser and purely psychological penalties, such as warning, blame, or reprimand, censure with or without inclusion in the official record; on the other hand, the more serious punishments having some effect upon the material or psychological advantages of civil servants, such as transfers, withholding of salary, delay in promotion, demotion, removal from grade, suspension, and, above all, dismissal. It is only very exceptionally that corporal punishment can be imposed. Thus soldiers can be deprived of all or part of their physical liberty by imprisonment.

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[1] Law of April 14, 1832, for army officers; law of April 17, 1906, Article 38, law of April 28, 1919, and decree of July 21, 1927, for magistrates.

[2] Gaston Jèze, *Principes géneraux de droit administratif* (3d ed.), p. 87.

b) So far as the authorities responsible for imposing discipline are concerned, present tendencies give civil servants guaranties analogous to those which all citizens find before the common-law courts. The head of the department can no longer administer discipline at his own discretion except slight penalties like warning or blame in certain bodies of civil servants. Punishment is, in fact, imposed either by the head of the department after obligatory consultation with a quasi-jurisdictional organism whose opinions may be optional but which in certain cases bind the head of the service, or by an autonomous institution which decides in its own right like a real court.

Thus institutions of the first type are connected with the disciplinary councils which have been created in most central offices: the councils of investigation of army and navy officers, the higher council of the magistrates created by virtue of the law of August 30, 1883, Article 14, for the court of cassation. On the other hand, genuine courts must be understood to exist in the different bodies which exercise discipline with regard to the teachers in the public schools; the university council and council of higher instruction for l'enseignement supérieur and for l'enseignement secondaire; departmental teachers' councils for primary education. Finally, there is one system of discipline which more than any other has a jurisdictional character: that which is exercised by the war councils and naval courts for soldiers and sailors charged with particularly serious faults.

Thus there exists a very clear evolution which tends to cover discipline with all jurisdictional guaranties. The movement tends not only toward the creation of specialized bodies but toward imposing upon them the obligation to follow upon essential points at the very least, a procedure analogous to that which is in force before the courts: adverse pleadings, right of defense, obligation to give reasoned decisions, etc. Most of these rules, moreover, are not defined in any text. They are derived usually from the jurisprudence of the council of state.

RETIREMENT FROM SERVICE AND PENSIONS

Causes which bring to an end the career of civil servants include the following: (1) resignation, (2) dismissal, (3) expiration of fixed term, (4) retirement, retirement for reasons of health (*la mise en réforme*), and (5) age limits.[1]

1. *Resignation.*—Resignation is the act by which a civil servant indicates his desire to give up his duties at a time when normally he might continue to serve. But the mere indication of this intent is not enough, in general, to break the bond which unites the civil servant to the administration. It is still necessary for the administration to accept the resignation. Only exceptionally can a resignation become final without being accepted by the authority; it is only in the case of certain elected officials (members of the general councils, municipal councils, mayors, etc.), and the notice of resignation even for these officials is surrounded with formalities.

The formality of accepting resignations has first of all the purpose of preventing the public service from suffering from the consequences of a hasty departure of civil servants. The administration has thus the means of retaining at least temporarily the services of the resigning officials. The formality of acceptance of resignation has in addition the purpose of preventing civil servants from avoiding discipline, which will be dealt with below.

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[1] [A more elaborate classification of the conditions under which officials are separated from the service is found in France than in Anglo-Saxon countries, with a corresponding variety in terminology which creates a difficult problem of translation. The following schedule indicates the translation followed: *démission*, "resignation"; *révocation*, "discharge"; *destitution*, "discharge"; *réintégration*, "reinstatement"; *suspension*, "suspension"; *mise à pied*, "suspension"; *mise en non activité*, "suspension from work but not from grade"; *mise en disponibilité*, "indefinite suspension with or without disciplinary connotation"; *mise en congé*, "suspension"; *mise en réforme*, "suspension for reasons of health."

On the theory of discharge and suspension, see Gaston Jèze, "Théorie juridique de la démission (et) de la suspension de la fonction publique," in *Revue de la Science Politique*, XLV, No. 4 (1928), 724 ff.—EDITOR.]

Finally, there are some cases in which resignations become illegitimate acts, for example, when they take the form of a collective movement intended to paralyze the public service. Article 126 of the penal code declares that civil servants who resign collectively are guilty of forfeiture. In fact, so far as civil servants are concerned the administration has the power to refuse to accept resignations and to punish the authors. Even in the case of elected officers whose resignation has full effect, the sanctions of Article 128 may be applied; they were enforced notably in 1907 to prevent mass resignation on the part of mayors of communes of Southern France stirred by the crisis in the vineyards.

2. *Discharge.*—Discharge is the act by which the administration requires the civil servant to quit his employment against his will and for disciplinary reasons. This measure is extremely serious because it puts an abrupt end to the career of the individual. If the administration could make use of it at its own discretion, the situation of civil servants would be precarious. Therefore, rules, some common to all civil servants, others peculiar to certain groups of civil servants, limit the sovereign power of the authority.

a) Discharge can be applied only to an officer still in service. After the moment when an officer has definitely left the service by another normal method (an accepted resignation, retired with pension, etc.), he can no longer be discharged.

b) Discharge can take place only after there has been a breach of discipline. Discharge must not conceal a measure taken for motives foreign to the good operation of the service. The civil servant has, moreover, the right to contest a discharge made under these conditions.

c) Every discharge must be preceded by furnishing the service record as foreseen by Article 65 of the law of April 25, 1905. This notice is not necessary in the case of a strike (council of state, August 7, 1909, Winkel, Rec., 1909, p. 826).

d) Even if in principle it is the hierarchic authority which decides upon discharge, there are nevertheless important restrictions with respect to this rule.

In the first place, it sometimes happens that it is not the immediate superior of the civil servant, he who appointed and directs, who discharges. In addition, the authority which discharges does not often have full liberty of decision. On the one hand, it is bound by texts which specify the cases in which discharge may take place. On the other hand, it can be required to secure the opinion of a consultative body, for example, a disciplinary council. Finally, sometimes the examination of discharge cases is turned over to a genuine disciplinary jurisdiction whose decision is binding upon the authority responsible for discharge.

The guaranty which is most frequently given to civil servants is the obligatory intervention of an advisory disciplinary council. Such is particularly the case of the central offices of the ministries, of departmental civil servants, and of colonial civil servants. Few bodies have the much more useful guaranty of disciplinary jurisdiction; they include scarcely more than army and navy officers, teachers in the higher and secondary schools (law of February 22, 1880) and certain magistrates (law of August 30, 1883, Article 13).

3. *Expiration of a definite period of time.*—Some officers hold their positions only for a given period, at the expiration of which they must leave the service unless they receive a new appointment. The most frequent case is that of elective officials. Thus municipal councilors and mayors are elected for four years, general councilors for six years. The judges of the commercial courts are likewise elected for a limited time.[1]

Among the appointed civil servants there are very few who hold office for a given period of time. Aside from probationers, who if they are not given permanent appointments must leave the service, there are only a few cases of this kind. We may cite soldiers called to the colors for obligatory service, re-enlisted soldiers whether privates or subalterns, teachers in the law faculties not holders of chairs, teachers in the medical schools not holders of chairs, second-class auditors in the council of state, etc.

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[1] Commercial code, Article 623.

There is one limitation which closes the career of most civil servants, that is, the age limit. But as all civil servants who reach the age limit have rights to retiring pensions, the act by which they leave the service is called retirement and does not take on the aspect of dismissal at the expiration of the period of employment.[1]

4. *Retirement and "réforme."*—Retirement refers to the idea that civil servants are employed for the service of the community and that there comes a moment when by reason of age or infirmity there is no advantage, either to the service or to the civil servants themselves, of remaining on active duty. In recognition of the fact that civil servants have used their strength in the service, and to prevent them from ending their days in want, the administration grants pensions to its personnel.

It happens, however, that the administration is obliged to remove an officer unable to perform his work on account of health without being able to give him a pension, because he does not fulfil the minimum conditions required to have a right to a pension; this measure takes the name of *réforme.*

Formerly, when conditions of acquiring pension rights were much more severe, recourse was frequently had to this procedure. Today it is a very rare occurrence and is applied particularly among military men. Moreover, the civil servant thus separated from the service generally receives a temporary payment called separation bonus. More rarely, he has only a right to the repayment of the deductions of his salary made for pension purposes. Nevertheless, separation is a sufficiently serious measure to necessitate a guaranty to protect civil servants. That is why statutes define the cases in which separation can be invoked and the procedure which must be followed. Thus officers and subalterns must be examined by "separation commissions."

The normal case which takes place is retirement when the civil servant has fulfilled the conditions necessary for a pension; the administration retires him either automatically or upon his request. The initiative belongs in principle, therefore, either to the administration or to the civil servant, and neither party can oppose the other. There are, however, some exceptions to this alternative.

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[1] The age limits are now fixed for certain civil servants by the decree of December 21, 1928.

In the first place, there exists for the majority of state civil servants a statutory age limit beyond which they must of necessity leave the service without either the administration or the civil servant being able to prolong the period of service (decree of December 21, 1928).

On the other hand, it sometimes happens that a civil servant having a right to a pension can prevent the administration from retiring him automatically before he has reached the age limit of his grade. Such is the case of certain civil servants who, at the moment when they reach their fifty-fifth or sixtieth year, are fathers of a least three living children and are able to continue their work; these civil servants cannot be retired before the age of sixty or sixty-five years (law of June 30, 1923, Article 3).

CIVIL SERVICE PENSIONS

[M. Lefas submitted an authoritative statement with regard to French pensions. In conformity with a plan uniformly adopted for all sections of this collection, this reference to pensions has been omitted.—EDITOR.]

THE JURISDICTIONAL GUARANTIES OF CIVIL SERVANTS[1]

French civil servants, when their rights and the guaranties of their status are violated, can turn to a judge. But this judge is not, as in other countries, the common-law judge. Litigation with respect to public office is taken before the administrative courts.

What are the actions which civil servants can initiate, and according to what procedure must they be initiated?

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[1] Laferrière, *Traité de la juridiction administrative* (2d ed.; 1896); R. Alibert, *Le contrôle juridictionnel de l'administration* (Paris, 1926).

There are two types of action which civil servants can bring: action for annulment based upon excess of power and substantive action asking for award of damages.

A. ACTION FOR EXCESS OF POWER

Actions for excess of power are brought before the council of state. Any civil servant who possesses a direct interest in the annulment of the contested act may appear before the council of state. Likewise legal organizations of civil servants may appear before the council when the general interests of their members are affected.

What are the types of decision which interested parties can bring before the council of state by virtue of the action for excess of power? They do not include all acts which the parties think contrary to their interests. In this respect, a triple distinction must be made between acts which establish the organic organization of the services, those which deal with the operation of the service, and, finally, those which concern the status, properly so-called, of officials.

So far as the first type is concerned, jurisprudence tends to refuse civil servants the right to contest in court acts which organize the services, the hierarchy, and functions in general.

Likewise jurisprudence refuses to accept actions initiated by civil servants against orders or instructions which they receive from their superiors.

In short, civil servants can only proceed against acts affecting their personal status, and even this proposition must be defined. A civil servant can contest individually only acts which cause him a personal prejudice and damage the interests of his career, for example, the promotion of a colleague of the same grade to a higher grade. On the other hand, it is not open to him to contest an act which would not be liable to damage him personally; thus he cannot contest promotions even when they are irregular in grades lower than his, nor *a fortiori*, acts concerning the status of different bodies of civil servants than that to which he belongs.[1]

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[1] Council of state, March 22, 1918, Rascol, *Recueil*, p. 318; Alibert, *op. cit.*, p. 117.

This limitation of the right to attack individually before the council of state acts concerning their status is compensated by the right which is recognized to legal groups of civil servants to sue in the name of their members with respect to acts which appear in violation of status.

Finally, it must be observed that the regularity of acts affecting the status of civil servants can be contested in certain cases by individuals who do not have the status of civil servants; thus the council of state will receive suits from candidates for a position in the civil service who have not been appointed as a consequence of an irregularity of procedure.

The action for excess of power is, as we have seen, open on a broad scale to civil servants. They cannot, however, use it to seek a reparation for all the injustices of which they may be victims. The action for excess of power is not acceptable in principle when there exists for civil servants another action either before the council of state or before another jurisdiction. This restrictive rule called *fin de non recevoir tirée du recours parallèle* has been interpreted in a very liberal sense by the council of state in recent years, particularly when the alternative action takes place before the administrative courts. Thus the action for excess of power on the part of a civil servant who complained of having been illegally deprived of a part of his pay was allowed, when strictly it might have been said to this civil servant that he could test his claims by the substantive action for award of damages, the normal action to obtain payment of any sum of money whatever.[1]

In order to permit civil servants to secure the practical benefits of the action for excess of power, i.e., the absence of lawyers and registration of action, the council of state allows the use of the action for excess of power as widely as possible.

One rule, however, remains inflexible: the action for excess of power is exclusively a suit against the legality of administrative acts, which can be based only upon facts falling within one of the four following categories, lack of jurisdiction, irregularity of form, abuse of power, violation of the rule of law, and which can bring about only the annulment, pure and simple, of these acts. The council of state deciding upon an action for excess of power never gives a judgment for the payment of a sum of money by way of damage. It does not even order an act of execution. It belongs to the administrative authority whose act has been annulled to make good the illegal action which it has committed, taking account of the decision of the council of state. If the administrative authority persists in its error, the civil servant will be obliged to appear again before the council of state. In addition, the civil servant can demand by the substantive action for damages a payment arising out of damage resulting to him from the illegal action of which he has been a victim.

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[1] See council of state, March 8, 1912; Lafage collection, p. 348, 1913; *Revue de droit public* (1912), p. 256.

The action for excess of power forms at the present time one of the essential guaranties of French civil servants. It has made it possible not only to secure observance of the regulations with respect to civil servants, both in letter and in spirit, but it has also made it possible in many cases to supplement the inadequacy of the regulations or their obscurity. In this respect nothing is more remarkable than the jurisprudence of the council of state with respect to promotion and discipline.

In addition, the theory of abuse of power permits the council of state to protect civil servants against the vexations to which they may be subject by reason of their political or religious opinions. The council of state, in fact, recognizes the right to annul a measure taken with regard to civil servants by the administrative authority, apparently within the limits of its competence and according to the rules of status, when it is asserted that the administrative authority has used its powers for a purpose other than those which were conferred upon it. Thus the council of state will annul a discharge of a civil servant by reason of elimination of his position when it is proved that this measure was intended to get rid of a civil servant who had committed no fault of service, but who did not have the same political or religious opinions as his superiors.

The theory of abuse of power likewise serves to prevent favoritism. It has contributed not a little in giving to the career of French civil servants a permanence which civil servants of other countries either do not recognize or in any case do not recognize to so high a degree, except perhaps the civil servants of Great Britain.

B. THE SUBSTANTIVE ACTION

When civil servants have been deprived of material advantages or when they think they have a right to payment for damages for which they hold the public authority responsible, they cannot take advantage of the action for excess of power. They must then bring a substantive action. This action is brought in principle before the council of state except in the following case: when the corporate person made defendant is a colony or an area having its seat upon a colonial territory, the civil servant turns to the colonial administrative council. On the other hand, actions with regard to invalidity of pensions arising from the law of 1919 are brought, in the first instance, before the departmental pension courts, on appeal before the regional pension courts, and, for final recourse only before the council of state.

The substantive action is more difficult than the suit for excess of power. It must be presented before the council of state by a lawyer attached thereto. In addition the registration fees must be paid immediately and are refunded only in those cases in which the suit is won. But this action above all permits civil servants to secure decision in litigation relative to their salaries and pensions and to obtain damages by reason of acts from which they have suffered.

REFORM OF THE STATUS OF CIVIL SERVANTS

Before bringing judgment upon the present situation of French civil servants, it is necessary to investigate the state of public opinion upon this question, and particularly the opinion of civil servants themselves. Are they satisfied with the present régime, or do they criticize it? If some criticisms are made, what reforms are proposed to improve the system?

On the first point, a very clear answer can be given. The present situation satisfies no one, neither the public authorities, nor the public, nor the civil servants themselves.

The present dissatisfaction was already felt in the first years of the twentieth century. The disturbances caused by the war have increased this dissatisfaction to such a point that sometimes the present order seems threatened.

It is necessary, therefore, to inquire what are the causes of the dissatisfaction to which we have just referred. What are the claims of civil servants and of the public? What, finally, are the reforms which are envisaged in order to remedy this state of things? In the present dissatisfaction we may discern the following causes: (1) inadequate status, (2) inadequate salaries, (3) unsatisfactory methods of work.

A. THE STATUS OF CIVIL SERVANTS[1]

Civil servants demand a general reform of their status. Up to now only fragmentary measures have been passed looking in this direction.

Many authorities taking action at different times have set up for each body of civil servants, even when much alike, a complicated and unequal set of rules. Hence, shocking inequalities, not only as between civil servants holding substantially equivalent positions although connected with different services, but also between civil servants belonging to the same service. Some officials, like the judges and army officers, have a very complete status which governs the conditions of appointment and promotion and discipline; others have only incomplete guaranties, for example, dealing only with promotion and discipline; others, finally, and by no means the least, like the prefects and subprefects, have no other guaranties than those which result from the jurisprudence of the council of state. Finally, inequality results from the fact that some civil servants have received a status from the legislature, while others are governed by regulations made by other and less permanent authorities.

Two streams of reform can be observed. Some demand the definition of a general status of state civil servants by parliament, and also for civil servants of the secondary groups. Thus would be obtained unification of the general rules applicable to all officials in the general service. The other tendency is opposed to unification and merely tends to partial reforms brought about for each group individually.

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[1] Henri Chardon, *L'Administration de la France—les fonctionnaires* (Paris, 1908), p. 135; Cahen Salvador, *op. cit.;* A. Lefas, *op. cit.;* Georgin, *L'Avancement* (Paris, 1911); Th. L. Barnier, *Service de la chose publique* (Nancy and Paris, 1926), p. 101.

These two tendencies have confronted each other without either, up to the present time, clearly prevailing.

The idea of a general status defined by legislation has yet received no application so far as state civil servants are concerned. A bill is pending before parliament, but this bill does not seem likely to pass while there is so little agreement upon such fundamental questions as the extent of rights of civil servants in the matter of professional organization.

So far as departmental and communal civil servants are concerned, the legislature has acted. The law of April 1, 1920, has established a certain number of fundamental rules which the departments must observe in fixing the status of their personnel. As for the communes the law of October 23, 1919, has been less exigent; it has simply imposed upon communes of 5,000 or more inhabitants the obligation to give a status to their civil servants, and it has authorized the council of state to draft a type status which was promulgated March 10, 1920. This type status may be adopted by all the communes; it has even become obligatory for communes which have neglected to work out a status for their employees within the period fixed by law.

A movement is now under way to extend the action of the legislature with respect to the status of the communal personnel. Parliament is in process of elaborating at the present time a new régime for municipal civil servants. The purpose of the reform will be to impose upon all communes a uniform status for all their officials.

Likewise there is even the possibility of giving a status to the employees of public departmental and municipal establishments which do not yet possess any.

As to the state civil servants, the question of reform of their status is always being studied. A bill was introduced in 1920, and numerous private bills have been presented by members of parliament. But as long as the government, parliament, and public opinion will not agree in the solution of the most delicate problems which this reform raises, particularly the right of association of civil servants, there is little likelihood that the reform in question will eventuate.

It is, however, urgent as everyone agrees that the public authorities take action and satisfy the legitimate claims formulated for so many years by the state civil servants.

It is true that the latter for some time have seemed less interested in their future status than in the much more pressing problem of their salaries. Their claims with regard to this question must be examined.

B. SALARIES

At all times French civil servants have been poorly paid. But a century ago civil servants were not numerous and enjoyed a considerable prestige. The post of civil servant was regarded as assurance of honorable status. In addition, if salaries were not high, the situation of the civil servant gave guaranties of permanence greater than those of all the other professions, and also, thanks to the retiring allowance, the certainty of being sheltered from need in old age. For all these reasons, civil service positions were sought after, and the administration had at its disposal for sufficiently mediocre sums a personnel of the first order.[1]

Toward the end of the nineteenth century and especially in the course of the last twenty-five years, the public services have developed enormously. The number of civil servants has greatly increased. The prestige which they commanded has diminished, not only because it became easier to enter the public service, but also because, with the development of private industry, positions of as high prestige, and infinitely more lucrative, were offered to the young generation. It would seem necessary for the state to increase the material and psychological benefits of its civil servants, but the continual increase of public expenditures made this measure difficult, the more so because the mass of civil servants, especially in the lower ranks, is so great that the slightest increase of salary amounts to very considerable sums. The situation was already serious before the outbreak of the war. A commission of inquiry set up in 1912 under the presidency of M. Hébrard de Villeneuve had already pointed out the difficulty. But after the war the increase in the cost of living and the fall in the value of money made the situation much worse. At the beginning it was thought sufficient to provide temporary increases of pay, particularly in the form of cost-of-living bonuses. Then it became necessary to turn to permanent increases. The state of public finance, however, did not permit the immediate increase of salaries to meet the cost of living; partial steps were taken. The humble civil servants, the most numerous, however, were granted increases proportionately higher than the middle- and higher-grade civil servants. This situation created inequalities and caused discontent. Furthermore, the civil servants came to demand not only an increase of their salaries corresponding to the fall in value of money, but on the occasion of this increase a general revision of their salaries already recognized to be inadequate before the war. The situation became involved for the government, and parliament then turned over to advisory commissions composed of high civil servants the duty of studying the delicate questions of salary revision. The Hébrard de Villeneuve Commission set up in 1920 commenced the work. The Trépont Commission finished in 1925 by applying a coefficient of salary increase of 3.11. Certain groups of civil servants, believing that their interestes were damaged, protested. Two commissions were set up, the Hendlé Commission for the post, telegraphs, and telephones, and the Martin Commission. The labors of these commissions were utilized by the government to establish new salary scales in the course of the years 1927–28. But at the present time, although the pre-war salary figure of all the lower civil servants has been multiplied by 5, i.e., the coefficient of loss of value of money, and even by larger coefficients, neither the middle group of civil servants nor the higher civil servants have obtained equivalent increases.

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[1] See Cahen Salvador, *op. cit.*, p. 328.

The government and parliament intend, however, to proceed to progressive increases which will re-establish equality at the end of some years.

But when this program will have been completed, the problem of salaries will not have been wholly settled. Civil servants demand, in fact, an improvement of their pre-war situation. Some groups of lower civil servants have already salaries comparatively higher than before the war, but little has been done for the middle group of civil servants and almost nothing for the high civil servants. The state of public finance will not for a long time satisfy the needs of civil servants by reclassification from the salary point of view. Such a measure can be brought about only by a general reform of the public services. That is a problem which has been envisaged and which deserves examination.

C. REORGANIZATION OF THE PUBLIC SERVICE[1]

Nothing is more common than complaints arising from the public and from civil servants themselves against bureaucracy, red tape, and waste of time and money.

It is noticed that public offices are not up to date, and have not taken advantage of the new methods which have permitted private enterprises to increase and prosper.

But although everybody is in agreement upon the necessity of proceeding to reform, opinions differ concerning the methods of arriving at this end. Some, with Fayol, foresee the introduction of industrial methods in the public services with the purpose of increasing individual output.

In syndicalistic circles, the claim is made that the public services be entirely turned over to the personnel organized in unions, or at least that the service be directed by bodies organizing the personnel and the consumer.

Finally, there exists a set of ideas which asks only that the public services be reorganized and outfitted in such a way as to increase output and to permit reduction of staffs; that industrial methods be introduced wherever they are compatible with the nature of the public service; that everywhere, finally, there be brought about a simplification and rationalization of methods of work.

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[1] Cf. Cahen Salvador, *op. cit.;* Th. L. Barmer, *op. cit.;* Albert Schatz, *L'Entreprise gouvernementale et son administration* (Paris, 1927).

It is along this path that the public authorities seem to be moving since the end of 1926. Several reforms have been brought about. The most important is the reorganization of the judicial service which permitted considerable reductions of staff and a corresponding increase in the salaries of the magistrates.

Reductions have already been brought about in the central offices of ministries. The army is in process of transformation. But it must be admitted that the work of reorganization of the public service thus undertaken is a long-time process which will require on the part of the governors of the French people much perseverance and tenacity.

CONCLUSION

What judgment can one make upon the present situation of French civil servants? The question must be examined from different points of view: (1) the value of the legal régime to which French civil servants are subjected; (2) the material and psychological situation of civil servants.

1. One takes away a complex impression of the legal régime to which French civil servants are subjected. On the one hand, one is struck by the absence of unity and homogeneity of this organization. In truth one ought not to speak of the status of French civil servants but of the many and different types of status which govern them. From this situation there result shocking inequalities; officials exercising analogous duties have guaranties far from equivalent.

This variety of status, however, presents some advantages. It gives to different bodies of civil servants a more independent character; it facilitates recruitment. Every group of civil servants presents well-understood combinations of material and moral advantages. Young people desirous to enter the public service can easily make their choice. In addition officers on active duty are retained within the organization by a praiseworthy *esprit de corps*.

Furthermore, even if it is admitted that the excessive variety of status presents more inconvenience than advantage, it must be observed that there is a present tendency in France to make uniform and even to unify the legal régime of civil servants. The first stage of this evolution consists in introducing within a department similar regulations. The second step consists in combining the regulations of different departments.

But the extent of this evolution must not be exaggerated. The unifying tendency meets much opposition. It is doubtful whether it will ever eventuate even for the central offices of the ministries or for the personnel of the public service in the organization of a general body of civil servants analogous to the English civil service.

Furthermore, there is no place for regret that the unifying movement is slow and that its effects are limited. The French character rejects a too great uniformity, and it is highly probable that the recruitment of civil servants would be still more difficult than under the present system if the different positions were interchangeable and if a civil servant responsible for a given service could be transferred at the will of the administration into a totally different service.

It is not to be doubted that the fundamental advantages which bind French civil servants to their occupations in spite of the imperfections of their status, in spite of the inequalities which exist between the too numerous groups into which they are divided, include, on the one hand, free access to public positions and, on the other, permanence of career.

So far as free opportunity to enter the public service is concerned, no one can deny that this situation prevails on a broad scale. Practically any individual who has the desired prerequisites can rise to the highest positions in the state. There is not in France as in certain countries any official aristocracy nor are there any closed bodies. It is true that promotion in some organizations is inadequately regulated, a fact which still permits favoritism to flourish. But these criticisms ought not to be generalized, and it is only fair to remark that very serious attempts have been made to remedy the faults which have been felt.

Moreover, taking the situation at large, we may say without exaggeration that the essential characteristic of the legal régime of French civil servants is permanence of career, a permanence resulting not only from legal dispositions and provisions of regulations but also from the jurisdictional guaranties assured to civil servants by the actions which are open to them before the administrative courts, particularly the action for excess of power before the council of state. Thanks to this permanence, there are few countries in which the sharp blow of political fluctuations makes itself as little felt upon the body of civil servants as in France.

If, therefore, one examines the legal system, the situation of French civil servants presents itself in a favorable light.

2. But the most complete statutory guaranties are not sufficient to insure normal recruitment of the public service. It is also necessary that officers be given material and psychological advantages sufficiently great to counterbalance the attraction of positions in private industry, ordinarily more highly paid. Are the advantages given to French civil servants sufficient in this respect? To answer this question, it is necessary to distinguish two points.

So far as the psychological situation of civil servants is concerned, we may affirm that although the status of civil servant still confers a deserved prestige in the eyes of those who hold it, the prestige which formerly attached to public positions has certainly diminished. Some bodies of civil servants have almost completely kept their following, but one feels just the same that young people are less attracted than formerly toward the public service. The two principal causes of this lack of favor are as follows: on the one hand, there is the excessive number of civil servants; on the other hand, there are out-of-date methods of work which one finds too often in the public service. Let the number of civil servants be reduced so far as compatible with the good conduct of the service; let the output be increased by a rejuvenation of working methods, and the psychological prestige of civil servants will be substantially increased.

But there is another evil to be cured. It is the problem of salaries. We observed in the foregoing that although salaries of the lower civil servants had been increased in a proportion substantially equal to the increased cost of living since the war, that although the material situation of certain humble civil servants had been improved as compared with the pre-war period, yet, on the other hand, the material situation of the middle group and the higher civil servants was much below the level necessary to insure a satisfactory flow of recruits and above all to insure stability of personnel. Several bodies of civil servants, particularly those of the finance administration, suffer from the lack of stability of their personnel. After some years passed in the service of state, officials resign in great numbers. It is true that serious efforts have been made in the course of the last two years to increase the salaries of civil servants, particularly those of the middle and higher classes, and it is always to be hoped that the recurring crises which at certain moments have seriously threatened the public service will soon no longer be felt. Confidence can be placed, moreover, in the spirit of disinterestedness and devotion to public affairs which is engraved in the hearts of the majority of French citizens, and which brings it about that for a modest but certain remuneration, lacking effective guaranties of permanence, the French state has always had and will still have at its service in the future honest, industrious, and intelligent officials.

DOCUMENTS

To illustrate the foregoing survey of the régime of French civil servants, there has been brought together a number of laws and regulations. These documents are arranged in the following groups:

1. General rules concerning all civil servants, notably the famous Article 65 of the law of April 22, 1905, requiring production of personal records.

2. Status of the personnel of the central offices of the ministries, taking as example the status of the personnel of the post and telegraph office.

DOCUMENT 1

GENERAL LAWS GOVERNING THE STATUS OF CIVIL SERVANTS

Finance Law of April 23, 1905, Article 65

All civil and military officials, all employees and laborers of all public offices have a right to the personal and confidential communication of all ratings and all other documents included in the record (*dossier*), whether prior to a disciplinary measure or transfer, or delay in promotion by seniority.

Finance Law of July 13, 1911, Article 141

Every appointment to a public office, or every promotion of a person attached under any title whatever to the "cabinet" of a minister or of an undersecretary of state, is null and void if it has not been inserted in the *Journal officiel* prior to the resignation of the minister or the undersecretary of state who countersigned it.

DOCUMENT 2

STATUS OF THE PERSONNEL OF THE CENTRAL OFFICES OF THE MINISTRIES

FINANCE LAW OF DECEMBER 29, 1882, ARTICLE 16

Before January 1, 1884, the central offices of each ministry will be regulated by a decree taken in the form of regulations of public administration and inserted in the *Journal officiel.* No amendment can be made except in the same form and with the same publicity.

FINANCE LAW OF APRIL 13, 1900 (AMENDED BY FINANCE LAW OF JUNE 25, 1920)

ARTICLE 35

Decrees promulgated by the council of state, which in execution of Article 16 of the law of December 30, 1882, will regulate in the future the central offices of each ministry, will fix only the salary of the personnel, the number of positions of each grade, and the rules relative to recruitment, promotion, and discipline. All other arrangements relative to organization will become the object of a decree which will be inserted in the *Journal officiel.* By way of exception the number of positions of heads of service of each group, to wit: directors-general or secretaries-general, directors, heads of division or chiefs of service, underdirectors, chiefs of bureau, can be increased only by a law. The establishment of ministries or of undersecretaries of state, of positions of secretary-general or heads of service in the central offices under whatever title.the positions be presented, and transfers of power from one department of the ministry to another, can be brought about only by a law and put into operation only after the voting of this law.

DECREE OF JUNE 13,1926, WITH REFERENCE TO REORGANIZATION OF THE CENTRAL OFFICES OF POST AND TELEGRAPHS AND OF THE NATIONAL SAVINGS BANK IN THE MATTER OF RECRUITMENT, PROMOTION, AND DISCIPLINE

The president of the French Republic . . . . the council of state having been consulted, decrees

ARTICLE 1

The directors, underdirectors, and engineers-in-chief are appointed by decree of the president of the Republic on the nomination of the ministry.

The accountant-general of the post, telegraph and telephone service and the controller of the national savings bank are appointed by decree after taking the opinion of the minister of finance.

Appointments to other positions in the central offices of posts and telegraphs and national savings bank are made by the secretary-general.

ARTICLE 2

The controller-general of post, telegraphs and telephones is placed under the administrative authority of the secretary-general of posts, telegraphs and telephones.

The controller of the national savings bank is selected either from among the bureau chiefs or from among civil servants included on the promotion list for the grade of bureau chief.

Chief engineers and engineers are recruited under the same conditions as civil servants of the same grade in the external services.

ARTICLE 3

Bureau chiefs are recruited exclusively either from among under bureau chiefs included in the promotion list provided by Article 7 of the present decree or from among civil servants of the external service of posts and telegraphs included in the said list.

Under bureau chiefs are exclusively recruited from among the civil servants and agents designated here within who have been included in the promotion list of the following grades:

1. Principal clerks (*rédacteurs principaux*) of the central offices and of the national savings bank.
2. Civil servants of the external services.
3. Agents of the external services possessing the diploma of the first section of the higher post and telegraph school, or having passed an examination.

Candidates who are included in the promotion list mentioned above, must possess a salary at least equal to that of third-class principal clerks and have at least two years seniority in this class.

ARTICLE 4

Clerks are recruited from among:

1. Clerks possessing the diploma of the first section of the higher school.
2. Clerks of the external service not possessing the diploma, following a competition whose conditions and terms are fixed by decree, and showing two years of service as clerk in departmental and analogous offices.

Clerks belonging to the central offices of the posts and telegraphs and national savings bank admitted to the first section of the higher school of posts and telegraphs are entitled to reinstatement upon leaving the school so far as vacancies occur in one of the services.

ARTICLE 5

The conditions of recruitment of other categories of agents and permanent assistants are fixed by the secretary-general with due observance of the right conferred by laws of March 21, 1905, and of April 17, 1916, January 30, 1923, July 18, 1924, and by Article 18 of the law of April 26, 1924, with reference to war invalids, war widows, and assimilated groups and to veterans in so far as the positions of the central administration are concerned as enumerated in Tables A, B, C, and F, annexed to the law of January 30, 1923.

ARTICLE 6

There is established under the presidency of the minister, or, in his absence, of the secretary-general, and, in the absence of the secretary-general, of the director having the longest service a council, including in addition to the minister and secretary-general, directors of the central offices and of the national savings bank, the inspector-general, the head of the service of general inspection of the posts and telegraphs, the director or head of the cabinet of the minister in charge of posts, telegraphs, and telephones and the head of the central service.

This council gives its opinion upon the allocation of personnel in the bureau and generally upon all questions which are submitted to it. It sits as a central promotion committee under the conditions provided in Articles 7 and 8 following.

It sits also as a disciplinary council under the conditions provided by Article 8 following. In this case it includes the directors of the central offices and of the national savings bank and the head of the central service.

The controller of commitments is present in an advisory capacity at the meetings of the council, except those in which the said council sits as a central promotion committee or as a disciplinary council.

The accountant responsible for centralizing the budget operations of posts, telegraphs, and telephones sits in the central promotion committee and disciplinary council. He also participates in the deliberations of the council of directors for matters concerning his service.

The duties of the secretary are carried out by an under bureau chief of the central service appointed by the minister, assisted by a clerk from this service, except for the meeting devoted to making promotion lists, or to the examination of cases of discipline, in which cases the duties of secretary are given to a bureau chief of the personnel service, assisted by a clerk.

ARTICLE 7

Two promotion lists are established for promotion of the civil servants and agents of the central administration and the national savings bank: class promotion list; grade promotion list.

Proposals relative to the preparation of these lists are formulated by classification commissions composed in each "direction"[1] of the director, subdirector and bureau chiefs. These commissions are presided over by the director and in his absence by the underdirector or the bureau chief charged with taking his place.

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[1] A group of bureaus.

The classification commission of the central service operates under the same conditions under the presidency of the chief of the central service.

Representatives of the personnel are made members of these commissions in cases in which representation is granted (by reason of numbers) for corresponding groups of the personnel of the external services.

The method of presentation of the proposals for class and grade promotions of civil servants, and members of the cabinet of the secretary-general and of the accounting office, are fixed by decree.

The council of directors mentioned in Article 6, joined with representatives of the personnel of the central administration of the posts and telegraphs and of the national savings bank in a central promotion commission, examines the propositions of the services as well as the requests or propositions concerning civil servants or agents of the external services, with reference to positions of bureau chief, under bureau chief, or clerk or principal clerk of accounts.

The representatives of the civil servants and agents of the external services in the central promotion commission of these services form a part of the council of directors for the examination of the applications of civil servants and agents of the external services for the posts of bureau chief, under bureau chief, or clerk, or principal clerk of accounts.

The council of directors thus organized as a central commission draws up the promotion lists which are promulgated by the minister.

A principal class promotion list is drawn up in the fourth quarter of each year for the following year. Supplementary lists may be established according to need.

A principal grade promotion list is drawn up in the second quarter of each year. It is effective from the first of July of the year of its establishment until the 30th of June of the following year.

Supplementary lists may be established either to secure compliance with the provisions of the decree of June 29, 1925, fixing positions reserved to agents with the diploma or to meet exceptional service requirements; the validity of these lists expires at the same time as the principal list of the same year.

ARTICLE 8

The representation of the personnel, whether in the council of directors sitting as a central promotion council or disciplinary council, or in the classification commissions of the directions and services is fixed by decree under conditions analogous to those provided for the external services.

ARTICLE 9

The regulations relative to the promotion lists do not apply to promotions of director, underdirector, and the accounting officer *centralisateur*. Likewise they do not concern agents of the manipulative services of the distribution and transportation of dispatches, agents of the technical services and permanent assistants other than stenographers.

With these exceptions no one can be promoted from grade or class unless his name appears in the corresponding promotion list.

ARTICLE 10

Class promotion takes place from one class to the class immediately higher, from among civil servants and agents fulfilling the requirements fixed by regulation.

No one can be promoted to a higher class unless he has completed a minimum of two years in the class which he occupies.

ARTICLE 11

For the grade promotion list only the following can be included:

1. For the position of bureau chief,

a) Under bureau chiefs, unclassified or belonging to the first two classes of their grade and having at least twelve years administrative service valid for pension.

b) Civil servants of the external services possessing a salary at least equal to that of under bureau chief of the second class.

2. For the position of under bureau chief,

a) Principal clerks of the central offices and of the national savings bank.

b) Civil servants of the external services.

c) Principal clerks of the external services possessing the diploma of the first section of the higher school.

d) Principal clerks with the diploma from the external services passing examinations provided in Article 3.

e) Agents of the external services having passed examinations for admissions to the position of principal clerk and the examinations referred to above and having finished a probationary period of at least one year as principal clerk in a departmental or equivalent service.

The candidates referred to in paragraphs *b*, *c*, *d*, and *e* must possess a salary at least equal to that of principal clerk.

3. For the position of *commis principal* and accounting clerk,

a) The principal clerks and clerks of the first three classes of veterans either wounded or holding a pension corresponding to an invalidity of at least 50 per cent.

b) Principal assistant clerk and assistant clerks of the central offices and of the national savings bank belonging to the first class.

4. For the position of principal supervisor, the supervisors of the central administration and the national savings bank having at least five years seniority in their grade.

5. For the position of supervisor, women employed in the central offices and in the national savings bank in the first two classes.

With respect to the positions of principal supervisor and supervisor, there are established separate lists for the central offices, on the one hand, and, on the other, for the national savings bank.

ARTICLE 12

The promotion lists provided in Article 7 are drawn up according to the order of seniority in salary as is determined for the promotion lists of the personnel of the external services; nevertheless, agents who have been included and maintained without interruption on earlier lists are, if their continuance is agreed upon, placed at the head of the new annual list, observing the chronological order of the lists in which they were formerly included, but taking account when necessary of the alterations which may have been made in their salary seniority.

Grade promotion lists are published in the *Bulletin des postes et télégraphes* in the order determined for the establishment of promotion lists of the personnel of the external services.

A decree will determine the conditions in which the class promotion lists will be made public to the interested parties.

Every nomination or promotion of civil servants or agents of the central administration of posts and telegraphs and of the national savings bank is published in the *Bulletin des postes et télégraphes*.

ARTICLE 13

Disciplinary penalties applicable to civil servants, agents, and workers of the central offices of posts and telegraphs and of the national savings bank include

1. Warning.
2. Reprimand with or without elimination from the promotion list.
3. Transfer without promotion into the external services.
4. Demotion of class with or without transfer to the external services.
5. Demotion of grade with or without transfer to the external services.
6. Suspension.
7. Discharge.

Warning is handled directly by the director or bureau chief of the service. The other disciplinary penalties are handled by the secretary-general. But the discharge of director, underdirectors and the accounting officer *centralisateur* of the post, telegraph, and telephone service, or the accountant of the national savings bank, and of the chief engineers can be brought about only by decree.

ARTICLE 14

Before becoming the subject either of a disciplinary measure or transfer or delay in promotion on the basis of seniority, civil servants, agents, and workers receive from the administration notice that they can secure within a specified period of time the personal and confidential communication of their record in conformity with the provisions of Article 65 of the law of April 22, 1905.

ARTICLE 15

The regulations concerning promotion and discipline within the external services of the posts and telegraphs are applicable to the central offices and to the national savings bank in so far as they are not contrary to the provisions of the present regulation. With regard to these two points, a decree settles the special detailed measures peculiar to the central offices and to the national savings bank.

ARTICLE 16

Civil servants, agents, and laborers belonging to the external services and transferred from these services to the central office of posts and telegraphs and to the national savings bank, or inversely, are appointed within the service to which they are transferred at that point of the salary scale corresponding to the one which they possessed in their former position.

THE BELGIAN CIVIL SERVICE

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INTRODUCTION[1]

The Belgian constitution (February 25, 1831) and the Belgian laws lay down certain principles which form the basis of the organization of the administrative services. These principles are laid down with reference to citizenship of civil servants (constitution, Article 6); to appointment (constitution, Article 66); to the oath of office (constitution, Article 127; law of March 6, 1831); to incompatible offices (constitution, Articles 36 and 103; Law of 1838, Electoral Code, Article 238); to the absence of immunity to civil servants (constitution, Article 24); to pensions or gratuities (constitution, Article 114; law of July 21, 1844).

The civil code contains some provisions concerning particularly domicile of civil servants (Articles 106 and 107) and certain freedom from supervision (*dispenses de tutelle*) (Article 427).

The penal code provides for cases of discharge, and prohibitions (Articles 19, 31, 32, 33, etc.); punishment for certain crimes or misdemeanors committed by civil servants against the public order (Articles 232, 266), and against persons vested with a public character (Article 276).

But the organization and regulation of the public services derive from the executive power which belongs to the king.

The organic regulations of the ministries proposed to the king by the responsible ministers have always possessed common characteristics but also some divergences (cf. organic regulations of the finance ministry and of the ministry of the interior and public health, below). Very rarely before the war of 1914–18 were measures issued common to all offices.

In the last ten years co-ordination and unification of organization and regulations have been brought about to a large degree. The law of July 20, 1921, established control by the minister of finance over all acts involving the creation of positions or the increase of payments.

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[1] Translated by Leonard D. White.

On the other hand, upon the initiative of the prime minister numerous decrees were submitted to the king by all the ministers collectively, in order to regulate in a uniform way within all offices most of the subject matter concerning the organization and operation of state services.

These decrees relate now to the scale of payment and organization; now to questions of a general nature, such as retirement of civil servants, or placing them on the redundant list, or discipline; now to subsidiary questions, such as subsistence expenses for civil servants while traveling, special payments, granting of honorary titles, etc. Several of these decrees submit certain administrative decisions to the approval of the council of the ministers, or the treasury committee, which thus become higher centralized organs of administration.

The executive power insures the execution of the laws and regulations concerning civil servants and administrative services under the guaranty of ministerial responsibility.

There is no competent administrative jurisdiction in this field. The ordinary courts take cognizance only of controversies relative to civil rights, particularly in the matter of pensions. But the executive power has established advisory groups whose intervention gives to state agents certain guaranties against arbitrary action.

Such is the interministerial commission presided over by a judge from the court of cassation, required to give its opinion upon every question relative to redundancy arising from elimination of office (royal decree of April 2, 1925, Annex III); disciplinary councils whose prior opinion is necessary for every relevant ministerial decision in every department (royal decree of December 17, 1923, Annex III, E). Several of these councils have a judge as president and include a civil servant of the same grade as the official concerned.

On the other hand, civil servants and agents of the state have organized associations and unions for the defense of their professional interests.

Freedom of association is guaranteed by Article 19 of the constitution. It is implemented by a law of May 24, 1921 (*Moniteur belge*, May 28, 1921).

Associations and unions of state agents have received certain official recognition.

The organic regulation of the ministry of justice created a permanent commission which may be consulted by the ministers upon any question which in a general way concerns the personnel of the central administration. This commission is composed of three members appointed by the minister and three members appointed by the union of civil servants and employees of the department.

A ministerial minute of November 30, 1920, created in the ministry of finance a mixed advisory commission for the examination of administrative regulations which relate to the status of the personnel. It is composed of civil servants and of a maximum of thirty delegates from the personnel of the various divisions of this department.

A decree of June, 1926, of the ministry of railways, marine, posts, telegraphs, telephones, and aeronautics, established the union status of agents of this department; recognized, in fact, the existing union organization; and instituted a commission with equal representation from both sides for the examination of questions concerning the administration and personnel. This commission is composed of fourteen delegates appointed by the associations and fifteen delegates of the divisions appointed by the minister.

CONSTITUTIONAL AND STATUTORY PROVISIONS

The principles relating to state civil servants and agents which have been formulated by the constitution and laws are few in number.

Article 6 of the constitution provides that "only Belgians are admissible to civil and military offices, with such exceptions as may be established by law for particular cases."

Some exceptions to this principle have been allowed by law, notably university professors (law of September 30, 1835, Article 13) and Belgian consuls and consular agents in foreign countries (law of December 31, 1851, Article 2); there are no exceptions for positions of an administrative nature properly so called. According to Article 24 of the constitution, "no previous authorization is necessary to bring action against public officials for acts of their administration, except as provided for ministers."

By virtue of Article 66 of the constitution, the king "appoints officers of general administration and for foreign relations, except as otherwise established by law. He appoints other public officials only by virtue of an express provision of law." In fact, no law establishes exceptions to the appointing power of the king with regard to principal positions in general administration and external relations, while numerous laws confer upon him the right of appointment of heads of provincial and municipal services, university professors, directors of scientific divisions, state teaching, etc.

Article 36 of the constitution deals with incompatibility of public offices and parliamentary seats. "Any member of either of the two chambers who shall be appointed by the government to any other salaried office except that of minister, and who accepts the same, shall vacate his seat immediately and may resume his duties only by virtue of a new election."

By virtue of the law of May 26, 1848, members of the Chambers can be appointed to no other salaried state positions than those of minister, diplomatic agent, or governor until at least one year after the conclusion of their elective position.

Article 238 of the electoral laws does not allow candidates who are civil servants or employees paid by the state to take the oath of office as member of the Chambers until after they have resigned their posts or duties.

Article 103 of the constitution permits no judge "to accept from the government any salaried office, unless he performs the duties thereof gratuitously and not then if it is contrary to the law of incompatibility." The incompatibilities fixed by the laws governing judicial organization extend in general to every paid position in the administrative group.

According to Article 114 of the constitution, "no pension or gratuity shall be paid out of the public treasury without authority of a law." The rights to pension enjoyed by civil servants and agents of state departments are governed by the law of July 21, 1844, developed and amended by later laws.

Article 127 of the constitution deals with the question of oath of civil servants. "No oath shall be imposed except by virtue of law. The form of the oath shall also be determined by law." The oath of civil servants is fixed by law of March 5, 1831.

The civil code mentions public positions in Articles 106 and 107 relative to domicile of civil servants. These articles read as follows:

Article 106, "the citizen appointed to a temporary or revocable public position keeps the domicile which he had before appointment if he has not indicated a contrary intention."

Article 107, "acceptance of a permanent position involves immediate transfer of domicile of the civil servant to the place where he is to perform his duties."

Article 427 frees civil servants from the necessity of being guardians (*tuteurs*) in certain cases.

Several articles of the penal code provide for discharge from public duties, positions, and offices; and prohibit holding them in the future as a consequence of certain convictions, or as a consequence of specific action of the courts taken at the same time that certain convictions are given (Articles 19, 31, 32, 33, etc.).

Other articles punish crimes and misdemeanors against the public order which civil servants may commit in the exercise of their duties (Articles 233–66) and particularly a combination of civil servants against the laws, royal decrees, or safety of the state (Articles 233–36). Insults against any person having a public character are punished by virtue of Article 276 of the same code.

REGULATIONS

The organization of state administrative services and their regulation derive from the executive power. The legislative bodies in this respect exercise only a remote control by means of the discussion and vote of budgets; the ministers, however, are responsible to them for the totality of their acts.

The executive power belongs to the king by virtue of Article 29 of the constitution. It follows that the king is the supreme head of the administration of the kingdom. In the terms of Article 67 of the constitution the king "makes the necessary decrees and regulations for the execution of the laws." By virtue of this power he makes the organic decrees which govern the public services.

"No act of the king is valid unless it is countersigned by a minister who by that fact alone assumes responsibility for it" (constitution, Article 64). Thus royal decrees, and particularly those containing the organic regulation of the departments, are, in fact, worked out by the administration under the direction of the constitutional ministers.

A certain diversity of organization and administrative regulation results from this; there are, however, numerous points of similarity and even of identity because they have their origin and *raison d'être* in analogous necessities.

A comparison of the organic regulations of the ministry of the interior and public health, with those of the finance ministry, permit us to appreciate these diversities and similarities (see below). The diversities are observed particularly in the conditions of the admission to positions in various divisions.

It will be noticed that in the ministry of the interior and public health the necessary prerequisites for recruitment and promotion of agents up to the grade of bureau chief are determined by successive examinations, from which are excused, or may be excused, candidates possessing certain diplomas; that in the ministry of finance recruitment is made through a competition organized periodically by the financial divisions and after a probationary period, while promotion is determined particularly by the good record of employees. The regulations of different departments mainly resemble these two types.

In addition, the highest civil servants have recently been charged with studying the possibility of setting up certain common rules fixing prerequisites for positions in the state offices.

These rules will without doubt have to be combined with the rules peculiar to each department.

Moreover, the autonomy of departmental organization and regulation, having the advantage of allowing adaptability of each to the needs peculiar to it, does not exclude the possibility of heads of these departments taking certain measures in common.

Thus a circular of June 25, 1884, signed by all the ministers, forbade civil servants and state employees to mix in party affairs, while at the same time recognizing their rights as citizens and promising them the protection of the government in the exercise of their liberty. The meaning of this circular has been defined since the war by various decisions of the council of ministers (see below).

Nevertheless, it must be recognized that before the war concerted action was quite exceptional and that each minister proposed to the king under his own responsibility the regulations which seemed to him best to suit the organization of his department.

REGULATIONS GOVERNING THE CENTRAL OFFICES OF THE MINISTRY OF THE INTERIOR AND PUBLIC HEALTH

ARTICLE 10

Civil servants of the grade of bureau chief and above are appointed and discharged by the king. The minister appoints and discharges other employees.

ARTICLE 11

No one is appointed to a position unless he is a Belgian by birth or naturalization and unless he has satisfied the military service requirement.

. . . .

ARTICLE 13

With the exceptions established by the present article, no one can be appointed copyist (*expéditionnaire*), typist, stenographer, clerk (*commis d'ordre*), clerk (*rédacteur*), or bureau chief unless he has demonstrated fitness before an examination board according to a procedure to be determined by the minister.

There are distinct examinations: (1) for the position of copyist (*expéditionnaire*); (2) for the position of typist; (3) for the position of stenographer; (4) for the position of clerk (*commis d'ordre*); (5) for the position of *commis* *rédacteur* of the second grade; (6) for the position of *commis rédacteur* of the first grade; (7) for the position of bureau chief.

Exemptions from the examination for *commis d'ordre* and for that of *commis rédacteur* of the second grade are granted to those holding a valid diploma showing two years of university studies. Likewise army reserve officers having taken part in the campaigns of 1914–18 are excused from these examinations, even in case they do not possess the certificate of secondary education (*d'études moyennes*). Soldiers having taken part in the campaigns of 1914–18, as well as civilians who have in the course of the war performed acts recognized to be of exceptional civic devotion, are excused from the examination for *commis d'ordre* if they have passed the examination for typist or for that of copyist.

Candidates possessing a diploma of doctor of law, doctor or *licencié* of administrative science, political science, or social science are excused from the examinations for the position of *commis rédacteur* of the first class and bureau chief.

ARTICLE 14

Only persons who have passed the examination for *commis rédacteur* of the second class, or who are excused from this examination, are allowed to take the examination for *commis rédacteur* of the first class.

In order to be admitted to take the examination for *commis rédacteur* of the second class, a candidate must possess a higher degree certificate of secondary education *d'études moyennes*), without distinction as between the sections thereof.

ARTICLE 15

Under bureau chiefs alone are allowed to take the examination for bureau chief.

ARTICLE 16

All proposals concerning establishment or elimination of positions, appointments, promotions, and resignations within the personnel of the central offices are submitted to the ministers by the secretary-general with an opinion from the service chiefs. No promotion is allowed to the personnel of the central offices except upon a documented report of the immediate chiefs of the person concerned, the opinion of the council of service chiefs, and the documented proposal of the secretary general.

ARTICLE 17

No one can be promoted to a higher grade before having served at least two years in the grade immediately below.

An exception is made only for agents who have commenced in their present grade at a salary higher than the minimum salary belonging to this grade.

ARTICLE 18

Promotions are allowed only as vacancies fall due.

The grade indicates the range of salary. Appointments individual to the person concerned can be made in case of exceptional merit with respect to civil servants having reached the maximum of their salaries for more than two years. They are made by the king after consideration by the council of ministers.

ARTICLE 19

The minister allows increases of salary as fixed by regulation. Increases granted earlier than ordinary or those whose figure exceeds the established scales are granted by the king.

ARTICLE 20

Before entering upon their duties, civil servants and employees take an oath at the hands of the minister or his delegate.

ARTICLE 26

Such civil servants or employees can hold no other position paid by the state, by the provinces, by the communes, or by public establishments. They are forbidden to solicit or to accept any elective position having a political character without prior permission of the minister, to follow any lucrative profession, to carry on either by themselves or under the name of wife or other person any kind of business, or to participate either on the board of directors or in the administration of a corporation or industrial establishment. The ministers may at any time make exceptions to these prohibitions.

Such civil servants and employees are forbidden without the permission of the minister to participate in any way whatever in the work of examining boards or exhibition or any boards not related to the department.

ARTICLE 27

The said civil servants and employees cannot be absent without authorization of the minister or his delegate.

Except in the case of sickness, duly ascertained, absences of more than two weeks are allowed only without pay.

If a civil servant or employee is absent without permission, or exceeds the term of his leave, he loses his salary for a period equal to that of his unauthorized absence, except in cases of *force majeure*, without prejudice to further disciplinary punishment, if necessary.

ARTICLE 28

The forms of discipline to be applied according to the gravity of offenses are: warning included in the record; reprimand; delay in promotion for a definite period; deduction of pay; suspension; demotion or transfer involving reduction in pay; suspension with or without temporary pay; discharge.

Deductions of pay are fixed for a period which cannot exceed two months; suspension involves the prohibition to carry on duties of office and suspension of pay. It can be imposed for a term not longer than six months.

The disciplinary penalties mentioned in the foregoing are imposed by the minister; always, however, demotion, suspension, and discharge are determined by royal decree, or by ministerial decree, according to the distinction established in Article 10.

In all cases the civil servant or employee will be given a hearing and will be allowed to present his defense in writing.

Ministry of Finance

ARTICLE 13

A high administrative council is established, presided over by the secretary-general and composed of administrative heads.

The council deliberates upon questions of organization and methods of work which are common to several services of a department.

It organizes the annual report of the personnel of the central offices.

It is given proposals having to do with

1. Redundancy by reason of elimination of position.
2. Appointments to positions higher than that of bureau chief.
3. Appointments to other positions when the most senior candidates are temporarily or permanently set aside.
4. Exceptional allowances granted outside of the ordinary rules.

With regard to these proposals, it gives advisory opinions after having heard the interested parties, if necessary.

With respect to discipline concerning the personnel of the central offices, it acts as the disciplinary council whose organization is provided by the decree of December 17, 1923.

ARTICLE 21

Civil servants and employees of the grade of under bureau chief and above are appointed and discharged by the king.

The minister appoints and discharges other employees.

ARTICLE 22

To receive an appointment in the office of the secretary-general and of the central departments, it is necessary:

1. To be a Belgian citizen and to enjoy civil and political rights.
2. To be at least eighteen years of age.
3. To have fulfilled the military laws.
4. To have passed the examination set up periodically for recruitment of personnel of one of the financial divisions.
5. In conformity with Article 6 of law of July 31, 1921, concerning the use of languages in administrative matters, to have passed the complementary examination upon the second language.

ARTICLE 26

No one is given a permanent position in the office of direct taxation and land register, in the office of customs and inland revenue, and in the office of registration and public lands unless he has completed a probationary period in the external services of the office to which he belongs.

Civil servants in the office of registration and public lands having obtained the *brevet de surnuméraire* may nevertheless be appointed to positions in the suitor's fund. In the office of the treasury and public debt, no one is promoted to the grade of underdirector unless he has completed before or after admission a probationary period of at least three months with a treasury agent.

Temporary appointments in treasury agencies and official missions including participation in the business of bureaus may be counted for probation.

ARTICLE 30

Promotions are allowed only as vacancies fall due.

The salary must conform to the grade.

ARTICLE 31

No one is promoted to a higher grade before having completed at least two years in the grade immediately below.

Exception is made only for agents who commenced their present grade at a salary higher than the minimum salary belonging to this grade.

ARTICLE 29

Before entering upon their duties, agents of the central offices take an oath at the hands of the minister or his delegate when for any cause whatever they have not taken an oath before in the performance of the duties of a position in the external service.

ARTICLE 40

Holders of positions in the central offices can hold no other position paid by the state, the provinces, the communes, or public administrations.

They are forbidden to accept any elective position, to hold any lucrative position, to carry on either by themselves or under the name of wife or other person any kind of business or to be members of the board of directors or hold office in any commercial house or industrial establishment.

In individual cases the minister may except civil servants and employees from the prohibitions mentioned in the preceding lines; the exception must be prior.

ARTICLE 41

Civil servants and employees cannot be absent without the permission of the minister.

Except in the case of sickness duly confirmed, absences of more than two weeks are allowed only without pay.

If the civil servant or employee is absent without permission, or exceeds the term of his leave, he loses his pay for the period during which his absence was unauthorized, without prejudice to other disciplinary punishment if necessary.

The deduction of pay in case of absence is paid to the widows' and orphans' fund of the finance department in conformity with Article XXIV, paragraph iv, of the law of July 21, 1844, and within the limits fixed by the regulations.

CIRCULARS AND DECISIONS WITH REFERENCE TO POLITICAL DUTIES

State civil servants and employees, whatever be their rank in the hierarchy, have the full right to enjoy freely their prerogatives as citizens and as heads of families. As citizens, if they are electors, they are entitled to vote according to their convictions. No pressure, no abuse of influence may be brought to bear upon them, and their personal opinions are the cause of neither unwarranted favors or disfavors. The very nature of their office, however, must prohibit them from taking active part in politics.

Decision of the Council of Ministers of October 11, 1921

The council has decided that it would be highly desirable that civil servants and agents of the state stand aside from all elections. It does not wish, however, completely to forbid state agents from taking part in politics.

The council has decided that the minister who may be requested by one of his subordinates for permission to participate in the elections will report to the council of ministers, which will decide if the nature of work performed by the agent allows such permission. If this can be granted, the agent in any case will be put on the redundant list without salary for a period which will not be less than three months.

Decision of the Council of Ministers of December 28, 1921

The council has decided that in the case in which a state civil servant is elected a member of the legislative chambers, the resignation of this civil servant must be required and to place him on the redundant list without salary is not sufficient.

Circular of the Prime Minister of March 12, 1925

The question is put whether if, without seeking elective position, civil servants, employees, workers, and other state agents can take an active part in an electoral campaign, preside over political meetings, or speak there.

The council of the ministers in the course of the meeting of March 9 decided that it would be useful to repeat that state agents may exercise freely and according to their conscience their rights as citizens and particularly their electoral rights without any pressure whatever, directly or indirectly influencing their vote, and without any party or any person inquiring how they voted or intended to vote, but at the same time it is necessary that

> state agents do not allow themselves to place the influence of their office at the service of any political party. Therefore the council has decided that if a state agent has the right to join a political association and to speak at the private meetings of these associations restricted to members alone, he does not have the right to preside over or to participate in the management of public meetings open to all electors or to speak there.
>
> It is clearly understood that this prohibition does not deal at all with professional associations and the meetings which they organize having purely professional purposes.

As heads of families they have the freedom of choice of a school for their children. No limitation, direct or indirect, can be made with respect to this constitutional right.

The duty of the government is to safeguard the full freedom of conscience of all state servants.

If these regulations shall be broken, the violation shall be immediately pointed out to a competent minister through the Regular Channels.

POST-WAR CO-ORDINATION

Within the last ten years, that is to say, since the war, the regulation of the state administrative services has undergone a profound transformation which is approaching completion; for the individualistic autonomy of the departments is substituted co-ordination; for diversity of regulation is substituted unity.

This evolution is explained above all by the abnormal development and disorder which were brought about in the administrative services after the war and by the urgent necessity of reducing the expenses of the state.

We must point out the fact that the legislative chambers have intervened twice in this field hitherto reserved to the executive power.

The law of August 3, 1919, insures the restoration of Belgians mobilized during the war to their civil positions and facilitates wounded veterans in securing positions in the service of the state, the provinces, and the communes (*Moniteur belge*, August 8, 1919).

The law of July 20, 1921, limits ministerial autonomy in a striking way by requiring that every administrative act involving the creation of even temporary positions or the revision of the organic arrangements relative to salary or payment of personnel must be countersigned by the minister of finance (*Moniteur belge*, September 5, 6, 1921).

But it is above all certain measures taken by the executive power which have brought about co-ordination and unification of administrative regulation.

Among these measures must be cited in the first place the royal decree of November 25, 1918, creating the "cabinet" of the prime minister (*Moniteur belge*, December 23, 24, 1918). This cabinet is, in fact, the co-ordinating organ.

Other organs instituted by the government have also contributed in a more or less important degree to the unification of the régime. These are:

1. The technical commission for the study of the administrative services of the state established by royal decree of March 10, 1922 (*Moniteur belge*, March 13, 14, 1922).

2. The commission responsible for studying the operation of the administrative services of the state and of proposing reforms to the government with the purpose of improving output, securing simplification and economy, established by a royal decree of February 23, 1926 (*Moniteur belge*, February 24, 1926).

These two commissions, which have successively collaborated with the prime minister, were composed for the greater part of persons outside the administration.

3. The commission responsible for the study and equalization of salaries established by the royal decree of February 18, 1924.

4. The permanent advisory salary committee established by the royal decree of March 30, 1925.

5. The treasury committee, comprising three ministers, having among its powers the control of state expenditures, established by royal decree of May 26, 1926 (*Moniteur belge*, May 28, 1926).

6. The mixed committees established by royal decree of March 15, 1927, and composed of representatives of the commission responsible for studying the operation of the administrative services of the state and of civil servants, having for its

duty to prepare at the earliest possible moment the reorganization of the departments and divisions (*Moniteur belge*, March 21, 22, 1927).

Numerous royal decrees, several of which derived from the work of these commissions, signed by all the ministers, have dealt with most of the subject matter concerning the organization and operation of the state administrative services.

Some relate to the scales of pay and establishments. They are:

The decree of March 25, 1921, with respect to the unification of grades and salaries of civil servants and employees of the central offices of the ministries (*Moniteur belge*, March 27, 1921).

The decree of December 25, 1924, on the payment of state agents, whose principles were summed up in these words: "considering that isolated measures, taken one by one have introduced a lack of balance into the salary scales, which has been greatly increased in the course of the last few years . . . . " (*Moniteur belge*, December, 25, 1924).

The decree of December 16, 1927, on the same subject,

> considering that it is important to maintain a relative value of positions while taking account in fixing salaries of the quality of studies carried on by the agent, of the mode of recruitment, of the nature and extent of the oath, as well as the extent of responsibilities assumed; that it is also necessary to facilitate recruitment of specially qualified persons to higher positions and to extend promotions by discretion" (*Moniteur belge*, December 17, 1927).

Finally, the second decree of the same date fixing the general establishments of the central offices of the ministries, "considering that it is necessary to revise the establishments of the central offices; that the reduction of establishments will permit a readjustment of salaries which will improve the situation of state civil servants and agents, and will facilitate recruitment in the future" (*Moniteur belge*, December 17, 1927).

Other decrees regulate uniformly for all offices certain questions of a general character. These are: the decrees of May 6, 1923, and April 2, 1925, on redundancy of state civil servants and agents (*Moniteur belge*, May 6, 1925); the decree of December 17, 1923, regulating discipline (*Moniteur belge*, December 22, 1923); the decree of May 12, 1927, fixing the retiring age of civil servants and employees and servants of the state departments (*Moniteur belge*, May 14, 1927); the decree of the same date fixing the conditions of redundancy upon request of civil servants and agents (*Moniteur belge*, May 14, 1927).

Certain decrees regulate for all the ministries subsidiary or special questions. These include the decrees of August 21, 1922, and January 12, 1923, fixing the residence and traveling expenses for state civil servants and agents required to change residence in connection with official duty; the decrees of July 9, 1923, and June 18, 1924, governing the financial situation of state civil servants called into the military service as militia, recalled to the colors in the same capacity, or as reserve officers, or as candidates for reserve officers; the decrees of July 22, 1924, and June 4, 1927, unifying regulations for the granting of an honorary title to civil servants and agents of the ministry retiring on pension or resigning; the decree of May 31, 1928, governing the bonus granted to the heirs of a decedent civil servant as compensation for expenses incurred in the fatal illness and funeral expenses.

REGULATIONS RELATIVE TO REDUNDANCY

ARTICLE 1

State civil servants and employees become redundant (1) by a suppression of position; (2) by withdrawal of position in the interest of the service; (3) by reason of special missions (positions) given by the Belgian government or offered by a foreign government, or a public authority, Belgian or foreign, and accepted with the consent of the competent authority when the duration, importance, or the very nature of these positions cannot be harmonized with the normal execution of the duties of the principal office; (4) when about to be retired on account of sickness or infirmity they do not possess years of service required for pension and are not subject to infirmities which makes it impossible to continue work; (6) for reasons of personal convenience; (7) for the performance of military service as a volunteer or for the acceptance of a colonial position.

If no other arrangement has been made by law or by organic decree, leave to become redundant is granted by the official who possesses the power of appointment of the agent in question.

ARTICLE 2

PARAGRAPH 1. Civil servants and employees cannot be made or kept redundant for any cause whatever when they fulfil the legal conditions necessary to secure a retiring pension.

If the redundancy is prolonged beyond this period, the civil servant or employee is required to repay to the treasury the difference between the redundancy salary and the retirement pension.

PARAGRAPH 2. Civil servants and employees who have become redundant for reasons of health appear once a year before the provincial pension commission or the authority which takes its place in the month of the year in which he was relieved of his duties.

In case of necessity the payment of redundancy salaries is suspended until the beneficiaries have appeared before the commission.

PARAGRAPH 3. In any case the duration of redundancy with salary cannot exceed, either on one or several occasions, the extent of active service. When the duration of redundancy reaches five years, the redundancy salary, except in the case of civil servants or employees made redundant by reason of suppression of position, can no longer be higher than the pension which the interested party would receive if at that moment he had been granted a pension as of that date.

ARTICLE 5 *bis*

There is established a commission responsible for giving advice to the government and of offering it proposals upon every question relative to redundancy through elimination of positions.

This commission includes a magistrate from the court of cassation as president, four members selected from the personnel, either in active service or retired, taken from different ministries, and a secretary.

The president and members of the commission, as well as their substitutes, are appointed by royal decree upon proposal of the council of ministers. Under the same conditions, a royal decree provides for their replacement. Appointments are for a period of five years at the most; they may be renewed. The decrees of appointment determine the retirement of the president and the members.

The secretary of the commission is appointed by the prime minister. The opinion of the commission is obligatory, (1) prior to each decree creating redundancy through suppression of position, (2) prior to any decision rejecting a request made by an agent holding one of these positions in view of his recall from active service.

The decree or decision mentions whether it is taken in conformity with, or contrary to, the opinion of the commission.

ROYAL DECREE RELATIVE TO DISCIPLINE, DECEMBER 17, 1923

ARTICLE 1

Civil servants and employees of the state who fail in their duties, or who compromise the dignity of their character, are subject to discipline.

ARTICLE 2

Disciplinary penalties include: warning included in the record; reprimand; change of residence; delay in promotion for a given period; deductions of salary and allowances; suspension; demotion, or change of position involving reduction of salary or allowance; redundancy with or without redundant salary; discharge.

ARTICLE 3

In the application of the present decree are included disciplinary penalties such as repayments to the state beyond the jurisdiction of the court of accounts and ordinary courts.

ARTICLE 4

The following are excluded from the provisions of the present decree:

Supplementary fines which are imposed as compensation for unexcused absences, for tardiness, or for lack of attention.

Fines incurred by virtue of law or regulations for irregularities in the maintenance of registration, delivery of receipts, etc.

Civil payments to the state within the jurisdiction of the court of accounts or any proper authority.

Errors committed by temporary employees.

ARTICLE 5

Decrees special to each department determine the authority entitled to impose the penalties.

ARTICLE 6

No penalties can be imposed except with a prior hearing to the interested party.

Nevertheless an agent who has been found guilty before the correctional or criminal court, or who has become involved in a deficit in funds or in kind, may be temporarily suspended before conviction.

As soon as the agent has made his defense before his immediate chief temporary suspension may be continued whenever circumstances require.

Temporary suspension involves suspension of salary and allowances.

ARTICLE 7

There are established in each of the ministries one or several disciplinary councils.

Composition of these councils is regulated in each department by the minister.

When the presence of a magistrate at the head of a disciplinary council is recognized to be necessary, the appointment of the magistrate is reserved to the minister of justice.

ARTICLE 8

The disciplinary council is responsible for giving the minister its opinion prior to the imposition of the penalties in cases which are brought before it by means of the regulation of the department for which it is created.

The council declines to give its opinion for derelictions within the competence of the ordinary courts and for penalties which are imposed by the court of accounts, but it takes note of the penalties beyond its own jurisdiction to aid in determining others.

ARTICLE 9

The accused person may be assisted before the disciplinary council by counsel whom he chooses from the personnel in active or retired service and belonging to the department of which he is a member. Otherwise the handling of cases by the disciplinary council and its method of operation are regulated in each department by the minister.

ARTICLE 10

Ministerial decrees determine, in case of necessity, for each of the departments the limits within which certain penalties are to be restricted. They regulate the consequences of the different penalties from the point of view of promotions.

ARTICLE 11

A redundant employee cannot receive a salary higher than that which he would have attained had he become redundant on account of illness.

ARTICLE 12

Discharge from a grade or from a position is reserved to the authority which conferred the grade or position.

Provisional suspension may be directed by an authority subordinate to that which conferred the grade or position.

The ministers are responsible for the execution of the present decree in so far as applicable to the department.[1]

EXTRACTS FROM THE ROYAL DECREE OF MAY 12, 1927, RELATING TO REDUNDANCY UPON REQUESTS OF STATE CIVIL SERVANTS AND EMPLOYEES

Considering that it is necessary to increase the rate of reduction of personnel in the state offices where the personnel is excessive and that consequently it is desirable to facilitate redundancy by suppression of position and for this purpose to adopt a temporary arrangement which will harmonize the compensation of persons with the interest of the treasury. . . . .

ARTICLE 1

Civil servants and agents of the state administrative services may be placed on the redundant list on the conditions hereinafter determined if they make the request before June 1, 1927, and if it is unnecessary to replace them.

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[1] In accordance with the rule followed elsewhere, the subject matter of Annex F, which dealt with some aspects of pensions as fixed by the royal decree of May 12, 1927, has been omitted.

ARTICLE 2

Redundancy granted by virtue of Article 1, although upon request, is treated as equivalent to redundancy brought about by suppression of position and is subject to the same regulations with exceptions provided below.

ARTICLE 3

The redundancy salary is established and revised according to rules now in operation for redundancy by reason of suppression of office, but it can never be increased. So far as the variable portion of the salary and the supplement are concerned, the amount of reduction remains fixed, whatever the fluctuations brought about by cost of living indices; it is always equivalent to the index which is applied for fixing the first month of the redundancy salary.

ARTICLE 4

Decrees granting redundancy by application of the present regulation do not need to be submitted to the opinion of the commission created by Article V. *bis* of the decree of April 2, 1925.

THE ITALIAN CIVIL SERVICE

ALDO LUSIGNOLI
Deputy; Secretary-General, General Fascist Association of Public Officials

INTRODUCTION[1]

EMPLOYEES OF THE NATIONAL ADMINISTRATION

The civil employees of the state are divided into: (1) Group A, classified in eleven grades (from the eleventh to the first); (2) Group B, classified in six grades (from the eleventh to the sixth); (3) Group C, classified in six grades (from the thirteenth to the eighth); (4) subordinate employees (messengers); (5) salaried employees.

In case of necessity, the state sometimes hires other employees who are not enrolled and to whom no career or position is guaranteed. These employees are called extraordinary, or temporary, or day workers.

Before the reform of 1923, the employees of Group A—university graduates—had directive and advisory functions. The employees of Group B (having a diploma from a *liceo* or from a "technical institute,"[2] or an equivalent title) have executive or auditing functions. The employees of Group C have routine functions (transcribing, bookkeeping, statements, archives, copying).

The passage from one group to another is forbidden.

To receive an appointment to a civil position, a citizen, besides being of a certain age (usually fixed between eighteen and thirty years), must be of good behavior, civic, moral, and political, must be of sound body, possess the academic title required to undertake the career to which he aspires, and normally must take and pass a special competitive examination. Noncommissioned officers, however, who have had at least twelve years of military service, and are deemed capable of satisfactory performance of the functions of the group, are entitled to be appointed employees in Group C (Grade XII).

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[1] Translation by Guido Marriotti, University of Chicago.

[2] [Both the *liceo* and the *instituto tecnico* correspond to the American college. However, the *liceo* has courses in Latin, Greek, and art, while the *instituto tecnico* does not give these courses, but scientific ones and modern languages.—TRANSLATOR'S NOTE.]

To obtain appointment to the initial grade of the group, a probationary period is required for a period not less than six months, and at the end of such period, the favorable verdict of the council of administration.

At the moment of beginning his service, the employee must take the oath of diligence, secrecy, faithfulness to his own duties, and swear that he does not belong—nor ever will belong—to parties or associations the activities of which are incompatible with the duties of office.

For each employee service ratings are compiled every year. They must contain the summarized verdict on the employee, expressed by the qualification of "excellent," "very good," "good," "mediocre," or "bad."

Against the qualification given him by his chief of office, the employee may appeal to the council of administration, and the latter formulates the definite qualification. This council exists in every ministry, and its task is to decide upon the measures dealing with employees having a grade not above the fifth.

The qualifications of "excellent" and of "very good" are necessary conditions (but not sufficient) for the regular progress of career; those of "good" and of "mediocre" delay the promotion; that of "bad" excludes the employee indefinitely from promotion to the superior grade. Two consecutive qualifications of "bad" produce a discharge from the service.

Promotions.—The promotions to the first four grades of the service are decided upon by the council of ministers, to the fifth and inferior grades by the council of administration of each ministry.

Promotions are divided into those for *comparative merit,* which are established for the higher grades of each group and by which is selected the most meritorious employee among those who have had at least three years of continuous service in the inferior grade; promotions for *absolute merit,* which are conferred by order of age in the same grade to employees qualified by at least five "excellent" or "distinguished" years; promotions by *age combined with merit.*

For Groups A and B promotion to the ninth grade is conferred in the proportion of one-third to those who pass a competitive examination for *distinguished merit*, and in the proportion of two-thirds to those who pass an examination for *eligibility*. The winners of the distinguished merit rating enjoy precedence over those declared eligible in the examination.

For Group C promotion to the eleventh grade is conferred in the proportion of one-third following an examination, and two-thirds by eligibility combined with merit.

End of employment.—This takes place:

a) By voluntary resignation, which must always be written and does not become effective until after the administration has accepted it.

b) By resignation *ipso facto*, which happens when the employee has lost his Italian citizenship, or has accepted an engagement from a foreign government without the authorization of the Italian government, or does not reach the residence assigned to him, or absents himself from his office for more than ten days without justification.

c) By dismissal from the service, a provision taken against the employee who produces a scanty output or who is incompetent in the duties of his own grade. Dismissal may also be decided upon for reasons of service. Finally, that employee is discharged who, by his behavior in or outside the office, does not give a full pledge for faithful fulfilment of his duties, or places himself in a position of incompatibility with the general political tendencies of the government.

d) By a pension given by the department or by request of the employer.

e) By recall from employment.[1]

f) By revocation of the employee's status.[1]

Disciplinary sanctions.—These do not exclude a criminal action against the employee. They are:

1. Censure, which is inflicted for neglect of service, for slight misdeeds, for absence not justified, or for making untruthful recommendations.

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[1] [The two "revocations" under (*e*) and (*f*) are explained later on under Nos. 4 and 5 of "Disciplinary Sanctions."—TRANSLATOR'S NOTE.]

2. Reduction of salary, which cannot exceed the fifth of the salary nor last over six months. It is inflicted for incorrect behavior, for slight insubordination, for having accepted a private engagement incompatible with the status of public employee, for irregular conduct, for disregarding the secrecy of office, for tolerating abuses committed by his subordinates, for unseemly actions.

3. Suspension from office and deprivation of salary, which may last from one to six months and carries with it the employee's removal from the service. It is inflicted for a second offense already punished by a minor sanction; for disloyal criticism of the administration and of the superior officials; for lack of honesty; for serious insubordination; for violation of the secrecy of office having harmful consequences; for serious negligence, etc.

4. Recall from employment, which is inflicted for serious abuse of authority or of trust; for a misdeed against honor; for lack of morality; for breaking the oath of office.

5. The revocation of the employee's status, which is inflicted for very serious infractions; for embezzlement of administrative funds or funds held in deposit for official reasons; for acceptance of any compensation whatsoever; for fraudulent violation of secrecy of office; for serious acts of insubordination; for insult to the king, the royal family, the parliament, or for public manifestations of hostility to the prevailing laws; for sentence passed *res judicata.*

The first two sanctions are imposed by the head of the office, the accusation being previously contested. Against the punishment the employee may appeal to the minister, who issues his own decree upon the motivated proposal of the disciplinary commission. The other three sanctions are inflicted by the ister, upon the proposal of the above-mentioned commission.

This commission is composed of three enrolled (*di ruolo*) employees of the administration, one of whom having a grade not inferior to the fourth (the president) and two of the fifth or sixth grade. The commission is constituted annually in each ministry.

The procedure that must be followed by the commission is established by law. The accused employee has a right to present his own defense and to be heard in person.

Leave of absence.—The motives for which the employee may be granted leave of absence are: (*a*) proved illness; (*b*) justified family reasons; (*c*) military service; (*d*) election as deputy.

Generally the leave of absence cannot be longer than a year. In a period of five years an employee may not be granted a leave of absence for illness or family reasons for more than two years.

The time passed on a leave of absence for illness or for military service is computed entirely in the total time to be served (*per la eventuale progressione nel ruolo*). The time passed on leave of absence for family reasons is not computed.

To the employee on a leave of absence on account of illness is granted an allowance not more than half nor less than a third of his salary, if he has completed ten or more years of service; and not more than a third nor less than a fourth, if he has completed less than ten years of service.

A leave of absence for family reasons or for military service gives no right to a salary or allowance whatsoever.

Vacation.—Every year the employee may have a vacation period of not more than a month. For serious reasons the vacation may be extended for not more than thirty days. During this extraordinary vacation, however, the employee loses his supplementary salary for active service, of which mention will follow.

Incompatibility.—Any private employment, any profession, any commercial or industrial undertaking, and any position in a commercial corporation (*Società costituite a fine di lucro*) is incompatible with the status of public employee.

Hours of work.—The hours of work are fixed at seven daily divided into two periods. When any office, because of scarcity of personnel or because of exceptional circumstances, requires extra work, the employees doing such work receive special compensation on an hourly basis.

The compensation is different when it deals with the employees of Groups A or B and the personnel of Group C. It is also different according to whether done by day or night.

Remuneration.—The remuneration is divided thus: (*a*) regular salary; (*b*) supplementary salary for active service; (*c*) bonus for children.

The regular salary is established for each grade of the entire administration (*gerarchia*). After two, three, or four years in a grade, according to the individual case, increases of salary are granted to those employees who have remained several years in the same grade.

Financial remuneration is granted because of addition to the family, from Grades VIII and below, to the employees of Groups A, B, and C, and also to the inferior grades of employees and to the permanent workmen who are married or who are widowers with minor children, to the amount of 150 lire for employees in Groups A, B, and C, to the amount of 135 lire for the inferior employees and the workmen; moreover, the inferior employees and workmen receive, respectively, 30 and 25 lire for each minor child up to the maximum of three.

For every minor child over the number of three the supplementary quota is granted in double measure.

Pensions.—Civil employees who have at least twenty years of effective service and are in one of the following categories have a right to an ordinary pension: (*a*) when they have reached the age limits established in their own branch of the organization; (*b*) when they have become unable to continue or to take up again service on account of infirmity; (*c*) when they have been laid off for two years and have not been taken back into the service; (*d*) when they have been pensioned, automatically or at their own request, having completed forty years of service or being sixty-five years of age and having completed at least twenty years of active service.

The annual pension is fixed at a fortieth of the first 4,000 lire of the average salary of the last three years of service, and at a sixtieth of the remainder of that sum for every year of service.

Those who have completed forty years of service receive four-fifths of the above-mentioned average.

SUBORDINATE PERSONNEL

The subordinate employees common to all the offices are assigned to service of the reception room (*anticamera*), of watching, of cleaning; and are divided into the grades of first messenger, head usher or messenger, and usher and orderly.

Part of the said personnel has the technical function of custody and surveillance (technical agents, custodians, superintendents, workmen, etc.), but only for the offices having a technical and industrial character. Each administration has a separate enrolment of subordinate personnel, which is classified according to duties. Generally the rules which govern the economic and legal status of the other classes of employees (administrative, accounting, and routine) are enforced in favor of the subordinate personnel.

The matter of discipline is governed by the same disciplinary commission which is called to decide upon infractions committed by other employees. The subordinate personnel has, however, its own council of administration which is formed in each ministry, or autonomous organization, by the head of the personnel, who is the president, and by two employees of a grade not inferior to the seventh. An employee of a grade not inferior to the tenth exercises the functions of secretary.

Besides the regulations applying to all the other employees, for the subordinate employees there are some special rulings contained in Articles 22 *et seq.* of the governmental regulations (*ordinamento gerarchico*) approved by royal decree of November 11, 1923, No. 2395, and those rulings contained in chapter xv of the legal status approved by royal decree of December 30, 1923, No. 2960.

As a result of these rulings the subordinate personnel is hired on probation generally for a period of six months and is appointed to the initial grade, following a favorable probationary period.

In order to obtain appointment, the subordinate employee must possess the general requisites of physical fitness and good behavior, must be an Italian citizen, and must not have passed the age of thirty years or of thirty-nine if disabled in war. Moreover, he must know how to read and write and must possess the requisites of technical ability prescribed by each ministry, if he is needed for duties above those of the reception room.

The appointment follows the provision of Article 8 of the law of August 21, 1921, No. 1312, according to which twenty positions must be given to eligible disabled war veterans, out of each hundred positions open to the initial grades of the subordinate personnel. Service in a military body and the fact of being a son of a public employee constitute, moreover, a title of preference to appointment to the foregoing positions. Finally, a quota of not more than a third of the vacant places in the grade of usher is reserved in favor of noncommissioned officers and members of military organizations in the service of the state.

Promotions from the lower to the higher grades of the subordinate personnel are made on the basis of age and merit, following the order of enrolment, in favor of those who have shown fitness, diligence, and good conduct. Exception is made for the grade of first messenger (which is a position for the subordinates usually assigned to the cabinets of the ministries, undersecretaries of state, and directors-general) to which one is appointed on the basis of comparative merit, that is, by the selection of the most deserving.

In the central ministries, in which the subordinate personnel is numerous, an official who has belonged or does belong to the administration of the state is placed in charge for the sake of supervision.

A punishment not exceeding 50 lire may be inflicted upon the subordinate employees in addition to the disciplinary sanctions prescribed for other employees, for the following reasons: (1) lack of decorum; (2) failure or neglect to clean the offices; (3) neglected watchfulness.

The agents assigned to the service of usher are supplied at the expense of the administration with a uniform similar for all the offices.

For justified exigencies of service and for specified duties, moreover, the free use of lodging may be granted to subordinate agents.

INSTITUTION OF WELFARE ("OPERA DIPREVIDENZA")

This institution is established with headquarters in Rome in favor of the civil and military personnel and their descendants.

It is administered by the general direction of the bank of deposits and loans (ministry of finance). It is a juridical person, with its own endowment and autonomous function.

The rules that govern its constitution, scope, and organization are contained in the single text of the laws approved by royal decree, February 26, 1928, No. 619, and respective regulations, approved by royal decree, June 7, 1928, No. 1369.

The institution of welfare has the following ends:

1. To confer allowances for life in favor of the employees enrolled in the institution who are exempted from service on account of infirmity or advanced age, without right to a pension; and also in favor of the widows and the other relatives of the enrolled who have no right to a pension.
2. To provide refuge, education, and instruction for the orphans of the civil and military employees of the state.
3. To confer fellowships upon the sons of civil and military officials in active service who attend secondary schools.
4. To pay a compensation upon honorable discharge to the civil or military employees who leave the service with right to a pension, or to their survivors.
5. To contribute to the expenses incurred by officials in active service or on leave of absence for ill health, in case of serious surgical operations or serious illness.
6. To send the sons of officials in active service, of grade not above the ninth, to mountain or sea for cure.

The income of this institution of welfare is derived: (*a*) from the contributions of the enrolled; (*b*) from sums withheld from the salaries in consequence of disciplinary provisions; (*c*) from incomes due the subsidy fund for employees not having right to a pension; (*d*) from legacies and donations given to the fund; (*e*) from interest on the institution's invested capital.

In the fund are inscribed the permanent civil and military personnel (officers and noncommissioned officers) of the state, in service on February 1, 1918, and those named below.

The classes of personnel which for any reason cease to be enrolled in the institution of welfare are excluded together with their respective families from the benefits granted by the institution, and they have no right to reimbursement of the contributions already paid.

EMPLOYEES OF LOCAL GOVERNMENT

The technical and administrative functions of the communes and provinces are intrusted to salaried and wage-earning employees whose recruitment, legal and economic status are determined by local regulations on the general lines traced in the communal and provincial law, general law (*Testo unico*), February 4, 1915, No. 148, amended by royal decree December 30, 1923, No. 2839, and by the ordinance of February 12, 1911, No. 297, for the execution of the communal and provincial laws.

EMPLOYEES OF PUBLIC UTILITIES AND PUBLIC CORPORATIONS

By public utilities are meant those institutions which are promoted or created directly by the state to perform functions of public interest and which maintain an autonomous administration, but are subordinate to the continuous control of the state.

By public corporations are meant those institutions created as a result of private initiative, governed by autonomous administrations, but also subordinate to the control of the state on account of the functions of public interest to which they attend.

The economic and legal treatment of the personnel of the above-mentioned institutions is not determined by any provision of general law, but instead it is determined by internal regulations or in their absence by rules of law regarding contracts of private employees. While there is a certain uniformity in the legal treatment, the economic treatment is much diversified according to the capacity of each institution.

It is not easy to synthesize the legal and economic conditions of this personnel, and we must limit ourselves to speak of it in a generic form selecting the elements from the various internal regulations.

Generally, the personnel is divided into three groups: directive, executive, and subordinate.

To be appointed, the same requisites as for the employees of the national departments are necessary and also the same academic titles, that is, university diploma for the first group, diploma from a higher secondary school for the second group, fulfilment of the scholastic obligation for the third group. Generally the appointments are preceded by public competitive examination, but they also often take place upon a direct appointment of the administration.

Before the contract of employment is confirmed, the employee undergoes a period of probation.

Promotions are decided by the councils of administration of the institution and are conferred either for comparative merit or on the basis of closed competitive examinations, after a specified period in each grade.

The contract of employment is dissolved either on account of voluntary resignation, or serious misdeed, or lack of work. The employee has a right to appeal either to the council of state or to the ordinary tribunes against the decisions of the councils of administration of the institutions.

The disciplinary sanctions against the employees who in any way disregard their duties are: verbal reproval, censure, suspension from salary and employment, removal from employment.

The most serious penalties are imposed by the council of administration.

The status of a public utility employee is incompatible with any other private employment or profession. The administration of the institutions in exceptional cases, however, may from time to time authorize their employees to undertake work foreign to that of their office.

The normal work schedule is seven hours; the holidays are generally those days recognized by the state administration. The annual vacation on pay does not extend beyond thirty days; the employee may receive leave of absence for family reasons, for ascertained illness, and for military service, while receiving for a certain period of time the aggregate of the ordinary assignments.

The economic treatment is generally a little better than that of the employees of the national administration. But such superiority is compensated for by diminished opportunities of a career which are extremely limited in the less important public utilities.

After minimum years of service these employees either receive a pension or payment from the so-called insurance fund, which is formed in part from the contributions of the employees and in part from the contributions of the institutions.

RIGHT OF ASSOCIATION

The right of association of the employees of the state, provinces, communes, public utilities, and public corporations is governed by the law of April 3, 1926, No. 563, upon the "legal discipline and collective relations of labor," and by the royal decree of July 1, 1926, No. 1130, which contains the rules for the execution of the said law.

These employees are allowed to group themselves into associations which, even if they are not legally recognized as associations of workers of private concerns, must, however, be authorized by decree of the head of the government in agreement with the other interested ministers.

The said associations take care of the moral and material interests of their members within the limit of the respect due to the prerogatives peculiar to the public administration. They are placed directly under the Fascist party with respect to political discipline, and they are controlled by the ministry of corporations with respect to the entire activities of association.

No form of association is granted to the employees of the ministries of internal affairs, colonies, and foreign affairs on account of the particular delicacy of their functions.

The most important of the associations of public employees, duly authorized, is the Fascist General Association of Public Employment, which has about 250,000 members divided into twenty-seven national associations *di categoria* and into ninety-two territorial organizations.

The following organizations are also authorized and act in the sphere of authority *di categoria:* National Fascist Teachers' Association, National Fascist Association of Railroad Employees, National Fascist Association of Postal and Telegraphic Employees, Fascist General Association of Employees of Industrial Companies of the State.

Nearly all the public employees belong to these associations, which co-operate with all departments by observing the most perfect discipline, and are recognized as exclusive representatives of the employees.

The associations of public employees, duly authorized, designate their own representatives to the chamber of corporations in the following measure:

Association	Number
Fascist General Association of Public Employment	28
National Fascist Teachers' Association	10
National Fascist Association of Railroad Employees	5
National Fascist Association of Postal and Telegraphic Employees	2
Fascist General Association of Employees of Industrial Companies of the State	2

It should be noticed that before the advent of Fascism the public employees of the state were not allowed to be members of the chamber of deputies.

LEGISLATION

1. R. D. L., December 30, 1923, No. 2960: Rules on the legal status of civil employees of the state.
2. R. D. L., November 11, 1923, No. 2395: hierarchical system of the administrations of the state.
3. R. D., December 30, 1923, No. 3084: executive, interpretative, and integrative rules concerning the economic treatment and career of the employees of the state.
4. R. D., May 8, 1924, No. 843: additions to the R. D., November 11, 1923, No. 2395, and successive modifications of the hierarchical system of the administrations of the state.
5. R. D. L., January 3, 1926, No. 48: rules on behalf of the war veterans employed by the state.
6. R. D., January 10, 1926, No. 46: supplementary provisions.
7. R. D. L., January 6, 1927, No. 27: rules integrating those established in favor of the war veterans employed by the state by R. D., January 3, 1926, No. 48.
8. Law June 27, 1929, No. 1047: new economic treatment in favor of the employees of the state.
9. R. D., February 21, 1895, which approves the *Testo unico* of the law on civil and military pensions in execution of the law of June 15, 1893, No. 279.
10. R. D., September 3, 1895, which approves the regulation for the execution of the *Testo unico* of the law on civil and military pensions of February 21, 1895.
11. *Luogotenenziale* decree of March 10, 1918, which provides for obtaining pensions or war bonuses and for their initial payments.
12. Law, August 21, 1921, which converts into law the R. D. of October 23, 1919, No. 1970.
13. R. D., November 21, 1923: new provisions on the normal pensions of the employees of the state.
14. R. D., December 30, 1923: provisions interpreting and integrating the R. D. of November 21, 1923, No. 2480.
15. R. D., November 21, 1923, No. 2477: provisions in favor of old pensioners.
16. R. D. L., May 8, 1924, No. 779: additions to R. D. of November 21, 1923, No. 2480.
17. R. D. L., August 13, 1926, No. 1431: provisions in favor of employees pensioned by the state.

18. R. D., February 26, 1928, No. 619: new *Testo unico* of the laws on compulsory insurance of the civil and military employees of the state and their survivors.
19. R. D., May 22, 1924, No. 844: rules integrating R. D., December 30, 1923, on the legal status and economic treatment of the employees salaried by the state.
20. R. D., December 31, 1924, No. 2262: regulation for the legal and economic status of the salaried employees of the state.

LEGISLATION ON THE COMMUNAL AND PROVINCIAL ORGANIZATION

1. R. D. L., August 17, 1928, No. 1953: legal and economic status of the communal secretaries.
2. R. D., March 31, 1929, No. 371: rules integrating and executing the R. D., August 17, 1928, No. 1953.
3. R. D., February, 1928, No. 577: *Testo unico* of the laws and legal rules on elementary instruction.
4. R. D., April 27, 1928, No. 1297: general regulation on elementary instruction.
5. R. D., May 13, 1923, No. 1117: pension system of elementary teachers.
6. *Testo unico* of the laws on public health.
7. Regulations on the public health.
8. R. D. L., April 19, 1923, No. 1000: Modifications of the *Testo unico* January 2, 1913, No. 453, on the pensions of medical officials.
9. Law, April 14, 1927, No. 604: reform for the betterment of the pension system and for the increase since January 1, 1926, of all the direct and indirect pensions already granted to the medical officials.
10. R. D. L., April 15, 1926, No. 679, on the compulsory insurance fund for the pensions of employees and those salaried by the local entities.

GENERAL

1. Law April 3, 1926, No. 563: legal treatment of the collective relations of work.
2. R. D., July 1, 1926: rules for the execution of the aforesaid law.

ROYAL DECREE, DECEMBER 30, 1923

PART I. RECRUITMENT OF EMPLOYEES AND CIVIL SERVANTS[1]

Chapter I. Appointment, Oath, Civil Service Status

ARTICLE 1

To obtain appointment to the civil service of the state it is necessary to possess the following qualifications:

1. To be an Italian citizen, with all political rights.
2. To have attained, either at the date of the decree calling for the competitive examinations, the age of eighteen years and not to have surpassed, at the same date, the age established by the regulations of each department.
3. At all times to have observed good civil, moral, and political conduct, to be determined by the department alone.
4. To have, besides the titles of study prescribed by the law, all other requirements established by the regulations of each department.
5. To be of healthy and strong constitution and free from defects and imperfections which would hamper the service.
6. To have sustained and passed a competitive examination.

In the meaning of the present decree are considered citizens of the state, Italians, not of the kingdom, and those who, on the occasion of each competition, are recognized as citizens by royal decree; nothing is added to the regulation concerning the effects of the citizenship given to the natives of Tripolitania and of Cirenaica, in the royal decree of June 1, 1919, No. 931, and November 6, 1919, No 2401.

With respect to economic implications, appointment either permanent or temporary begins from the date of appointment when the employee, for just reasons, takes office at a later date than that for which he was hired.

. . . .

ARTICLE 3

Candidates for the civil service who have passed the examinations and exceed the number of offices to be filled do not acquire any right to be appointed to offices which subsequently become vacant. The administration, however, is entitled to assign to said competitors, according to the order of competition, the offices which become vacant within six months from the approval of said competition, up to a maximum of one-tenth of those who enter the competition. Those who have twice failed the competitive examinations for the same office will not be admitted to further competitive examinations for that office.

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[1] Translation under the direction of the Royal Italian Consul-General, Chicago, Signor Giuseppe Castruccio.

ARTICLE 4

With respect to positions of exclusively technical nature, requiring special training, the regulations of each department may provide that places, even if of a higher grade, are to be considered as initial in the civil service, if in the judgment of the council there are no persons among employees of a lower grade fit to enter such positions.

ARTICLE 5

Upon entering service temporary employees shall give solemn promise of diligence, secrecy, and faithful performance of duties in the presence of two witnesses and before the direct superior or a substitute. A written memorandum will be made of said promise; the original is kept in the personnel file of the employee, to whom a copy is given. The formula of the solemn promise is as follows:

> I promise that I will be faithful to the king and to his royal successors; that I will loyally observe the constitution and the other laws of the state; that I will faithfully perform all of the duties of my office with diligence and zeal for the public good and in the interest of the department, scrupulously keeping the secrets of office and conforming my private and official conduct to the dignity of the office. I further state that I do not belong and I promise not to belong to any association or party whose activities are not in harmony with my official duties. I promise to perform all of my duties exclusively for the inseparable good of the king and of the mother-land.

The solemn promise will not be repeated in the case of transfer to another office.

ARTICLE 6

Upon assuming office employees who receive a permanent appointment whether or not preceded by a period of probation, shall, under penalty of losing such appointment, be sworn before their office chief, or before his delegate, in the presence of two witnesses. The formula of the oath is as follows:

> I swear that I will be faithful to the king and to his royal successors; that I will loyally observe the constitution and the other laws of the state; and that I will faithfully perform all the duties of my office with diligence and zeal for the public good and in the interest of the department, scrupulously keeping the secrets of office and conforming my public and private conduct to the dignity of the office. I swear that I do not belong to an association or party whose activities are not in harmony with my official duties, nor will I belong to one. I swear to perform all my duties exclusively for the inseparable good of the king and of the mother-land.

A written copy is made of said oath; the original is kept in the personnel file of the employee, to whom a copy is given.

ARTICLE 7

For each employee there is kept in the personnel office of each central administration a matricular register, in conformity with the sample attached to the decree. The employee is required to inform the personnel office of changes in his family status.

CHAPTER II. HIERARCHY; SENIORITY

ARTICLE 8

The hierarchy among the employees of each group is constituted by the grade; in the same grade by seniority. Seniority is determined by the date of the decree of appointment or of promotion; a parity of such date, by that of the decree of promotion or appointment to the preceding grade, and parity of dates of all the decrees by age; saving, in any case, however, the rights obtained by rank or examination, by scrutiny of comparative merit, and by the merits of graduation. In computing seniority, the time that the employee was not in the service for family reasons, or was suspended from his grade and salary, shall be deducted.

In March of each year each ministry shall print the seniority lists of its employees, as of January 1, giving such information in the *Gazetta ufficiale* within sixty days from the publication of said information. Employees may appeal to the minister to obtain correction of their seniority position. The decision of the minister on such appeal is final.

ARTICLE 10

Petitions of an employee to his authority shall always be sent through the head of his office. Communications or petitions which are sent directly will be refused. The employee, however, has the right to turn over to his superiors sealed matters addressed to the minister. Such matters are forwarded without delay.

CHAPTER III. ADMINISTRATIVE COUNCILS; SERVICE RATINGS

ARTICLE 11

Within each ministry there is a council of administration empowered to give its opinion regarding the status of employees of a grade not higher than the fifth, unless otherwise specified.

For the employees of a grade higher than the fifth, the duties of the council of administration are exercised by the council of ministers.

In each ministry, the council of administration includes the general directors and officials of an equal or higher grade who have effective supervision of a service; in case of absence or inability to serve, their place is taken by officials indicated by the regulations; in case of absence or inability to serve, the chief of personnel is replaced by an official of a grade not below the seventh.

The council is presided over by the minister or by the under secretary of state or by the official of the highest grade or seniority.

An employee of the ministry having a grade not below the ninth will exercise the functions of secretary.

For the validity of the decisions of the council of administration at least two-thirds of the members must be present, and, in every case, not less than three members including the president. The decisions are taken by an absolute majority. In case of tie the vote of the president prevails if he is the minister or the undersecretary of state; otherwise, if the council is presided over by the highest official in grade or seniority, the decision is to be held favorable to the employee. The chief of personnel has the duty to submit to the minister, as soon as possible, the minutes of each meeting of the council of administration. The minister will affix his signature, indicating which decisions he does not approve.

For employees regulated by special laws, the council is constituted in the manner prescribed by the appropriate regulations to which this article applies if said regulations do not otherwise provide.

ARTICLE 12

For each employee, including temporary employees, there is compiled in January of each year a service rating according to the form established for each department. The record should contain information regarding the physical condition and intellectual qualities of the employee, his official and private conduct, his diligence and activities, and also the special circumstances regarding his duties, his aptitude for service in higher grades, and any other annotation thought opportune. The service ratings are to be compiled and signed by the official in charge of the service to which the employee is attached, and are revised and signed by the chief of the office who, according to the organic division of the services or the local divisions, presides over one branch of the department. The judgment is expressed in the following terms: excellent, very good, good, medium, and bad. The ratings are communicated under the proper form to the employee, who affixes his signature.

An employee may, within fifteen days after receipt of the record, appeal to the council of administration against the rating given him. The council, noting the report of the personnel office, and also the report of the office chief who made the rating will formulate the definite rating, with reasons, if it does not see fit to confirm that given by the chief of the office; against the decision of the council of administration, which should be communicated immediately to the employee, no appeal is allowed. For temporary employees, the service rating shall be made up also at the end of the temporary appointment.

ARTICLE 13

The rating of excellent is given only to those employees who, considering the group to which they belong, have given special proof of capacity, culture, and preparation, or activity and diligence, and whose conduct has been exemplary, also those who have done exceptional work and who have displayed aptitude for executive duties, when such is the case. For such ratings it will also be necessary to take account of the service rendered under exceptional conditions of tranquillity and public health; of the time spent in unhealthy and unsatisfactory residences; of studies or works of special importance; of publication in administrative matters or other technical matters, and especially those relative to the department to which the employee belongs. Mention shall be made of these facts in the service rating.

The rating of very good is given to those employees who, besides possessing the general requisites of capacity, activity, diligence, zeal, and good conduct, have discharged their duties satisfactorily and shown themselves capable of executive work, if such is the case. Neither the excellent nor the very good rating can be given to an employee who underwent some disciplinary action in the year for which the ratings are made; or who tried to bring undue pressure on his superiors even when he was not held liable for punishment therefor.

ARTICLE 14

The rating of good is given to employees who have given proof of capacity, diligence, and good conduct. The years for which an employee has obtained a rating below that of good are not to be computed in allowing the periodical increments.

ARTICLE 15

The rating of medium is given to employees who in the year for which the record is made did not give sufficient proof of capacity, diligence, and good conduct. The rating of medium is given to every employee, who, in said year, underwent punishment higher than censure, and to those who, in the same period of time, by subterfuge succeeded in avoiding orders of superior officers, failed to reach their (official) residence, and did not give regular service.

Employees who receive the rating of medium cannot be promoted by examination until at least three years have elapsed. When the promotional examination takes place before the lapse of said period, the employee may be admitted to the examinations providing that he has the qualifications stipulated in chapter iv of the present decree.

ARTICLE 16

An employee who, during the year for which the rating is made, did not show capacity, diligence, and good conduct and was suspended from his grade and salary is rated bad. An employee who for two consecutive years is rated bad will be discharged from office. The rating of bad excludes, without limit of time, from promotion to a higher grade and from examination therefor, except after the expiration of five years from the last such rating.

ARTICLE 17

When for one or more years ratings have not been compiled, they are established when necessary for such years by the council of administration, without appeal, taking into account elements of fact and of judgment in possession of the offices.

ARTICLE 18

The heads of the offices are responsible for the omitted compilation of ratings, and the personnel chief for failure or delay in distribution of the prescribed forms.

CHAPTER IV. PROMOTION

ARTICLE 19

Appointments to grades higher than the fifth are made by the council of ministers. Employees from other lists or other departments, or persons outside of the administration of the state, may be appointed to these grades.

ARTICLE 20

All promotions up to the fifth grade, except those to be confirmed following examination, are regulated by special rule, and shall be preceded by the opinion of the council of administration to whom, therefore, are communicated the personnel files and ratings.

ARTICLE 21

Promotions up to the ninth grade from the lists belonging to Groups A and B[1] are given for one-third of the vacancies by competitive examination for distinct merit to employees of the tenth and eleventh grades, and for the other two-thirds, by practical examination of employees of the tenth grade. There are admitted to the competitive examinations, and to the practical examinations, employees who, at the date of the decree which calls for such examination, have given respectively eight or ten years of service in grades ten and eleven in the same department and who belong to the same group, taking also into account temporary appointment or training time, and who, in the opinion of the council of administration, have shown capacity, diligence, and good conduct.

The said terms are reduced by two years for employees having a university diploma or equivalent titles.

[Rules for computing length of service are omitted here.—EDITOR.]

ARTICLE 22

The competitive merit examinations are given for not more than one-third of the vacancies announced on the date of the decree calling for such examination, less the number of the successful candidates at the preceding competition who have not yet received promotion.

ARTICLE 23

Promotions to the eleventh grade of the positions belonging to Group C are given to employees of the twelfth grade of the same group, for one-third of the vacancies following a competitive examination, and for the other two-thirds by seniority coupled with merit, upon designation of the council of administration and after assigning one place by competition and two by seniority.

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[1] See Introduction, p. 303.

To the competitive examinations are admitted employees who, at the date of the decree calling for such examination, have given at least ten years of effective service in the twelfth and thirteenth grades, taking also into account training or temporary appointment, unless otherwise directed by special regulations, and who, in the opinion of the council of administration, have shown capacity, diligence, and good conduct. Promotions for seniority coupled with merit are given to those who have had at least twelve years of effective service, to be computed in the manner above specified unless otherwise directed by special regulations. For employees coming from the noncommissioned officers of the royal army, royal navy, royal aviation corps, and of the royal guard of the treasury, who are appointed according to the existing law, the terms mentioned in the preceding paragraphs are reduced by four years.

ARTICLE 24

Grade promotions not regulated in the preceding articles or by Article 6, 7, 9, 10, 12 of the royal decree of November 11, 1923, No. 2395, are given, individually, to employees of the grade immediately below in the same roll, exclusively for absolute merit, upon designation of the council of administration.

ARTICLE 25

Promotion of employees belonging to the technical rolls is governed by the rules and regulations of each department. Such rules and regulations will be revised in order to unify them as much as possible with the dispositions of this chapter.

ARTICLE 26

An employee subjected to disciplinary proceedings, according to Article 69 and following of the present decree, may be excluded by the minister, having heard the council of administration, from promotional examination or scrutiny when said examination or scrutiny is taking place during the disciplinary proceedings.

When an employee is subjected to the disciplinary proceeding aforesaid, pending announcement of the promotion, this promotion is suspended until the disposition of said proceeding.

When the proceeding is concluded by the application of a disciplinary punishment graver than the censure, the exclusion from the promotion is definite according to Article 15 and Article 16 of the present decree. Exclusion from promotion takes place also in cases in which a punishment graver than censure is given after the compilation of the last rating or before the examination or scrutiny.

An employee having a grade not below the seventh, who is punished with the maximum penalty of suspension from grade and salary, cannot obtain promotion for a period of eight years.

CHAPTER V. PROMOTIONAL EXAMINATIONS

ARTICLE 27

At the time of designating employees to be promoted for comparative merit, in accordance with the opinion of the council of administration, there are selected the most capable among those who possess the prescribed requirements up to the number of vacancies to be filled, thereby establishing the order of merit. The candidate shall have received, at least in the preceding five years, ratings of excellent or very good. When, however, there are vacancies to be filled after the designation aforesaid, there may be chosen also employees who have received not more than one qualification not below that of good in the first two years of the said period of five years.

ARTICLE 28

The promotions for absolute merit are given, in the judgment of the council of administration, in order of seniority in the grade, to employees who, in the preceding five years, have at least obtained the rating of excellent or very good, or who have received not more than one qualification not below that of good in the first two years of the period of five years.

ARTICLE 29

In grade promotions which are made in part for comparative merit and in part for absolute merit, the council of administration proceeds in the first instance to choose among all the candidates to be promoted for comparative merit, giving to each one chosen his relative place according to Article 27. It can then proceed to the scrutiny for absolute merit, placing the meritorious candidates in order of seniority and in the proportions established among those chosen for comparative merit. Persons promoted for comparative merit cannot have a position less favorable than that which belongs to them according to their position of seniority.

ARTICLE 30

When grade promotions are to be made according to degree of merit, the designation of the employees to be placed in such lists is made in accordance with the opinion of the council of administration among employees who possess the prescribed requirements and who in the preceding five years, at least, have received the rating of excellent or very good, or who, in the first two years of the said five years' period have received, instead of the aforesaid, one or two ratings of good.

In the merit list are placed those employees thought worthy of being promoted to the higher grade, according to the preceding paragraph, even if their number is greater than that of the vacancies to be filled. Those in the list who exceed the number of the said vacancies will receive promotion according to said list when there are new vacancies in the higher grade, but the limitations of time and number established by other regulations are to be followed.

ARTICLE 31

Promotions for seniority coupled with merit are made according to the order of seniority in the grade and in the manner established by Article 28. Such promotions, however, can be given also to those who have received a rating not below that of good, in the first two years of the preceding five years' period.

Chapter VI. Original and Promotional Examinations

ARTICLE 32

Competitive examinations for admission to the civil service are called by a ministerial decree, to be published in the *Gazetta ufficiale* not less than two months prior to the date fixed for the beginning of the examination.

The decree must indicate: (*a*) the documents required; (*b*) the number of vacancies to be filled; (*c*) the place or places in which such examinations will take place, and the date of the written examinations; (*d*) the program of the written and oral examinations; (*e*) any other information or prescription which will he helpful.

The examining commission is constituted according to the regulations of each department.

ARTICLE 33

Promotional examinations are called by ministerial decree to be published in the official bulletin of the ministry not less than one month before the date fixed for the beginning of such examinations.

ARTICLE 34

When the written examinations take place in more than one locality away from that of the examining commission, there is constituted a supervising committee presided over by a member of said commission, or by an employee designated by the minister, and composed of other employees of grade not below the eighth, all residing in the locality where the examinations take place. The secretary of the committee, to be chosen from employees of a grade not below the ninth and residing in the same locality, is designated by the president. In case any member of the examining commission or of the supervising committee is unable to serve, such member is to be replaced by one of the same grade.

ARTICLE 35

The examining commission prepares three themes for each test, if the examinations take place in one locality, and one theme only when the examination takes place in more than one locality; the themes, as soon as made, are closed in sealed envelopes and signed on the outside on the margins of the flap by the members of the commission and by the secretary. The envelopes are kept by the president of the commission or by the chief of the local office, if the examinations are held in not more than one locality. At the hour established for each examination, which must be the same for all localities, the president of the examining commission or of the supervising committee calls the roll of the candidates and, after having ascertained their personal identity, places them in such a way that they cannot communicate with each other. Then, having ascertained that the envelopes containing the themes have not been tampered with, if more than two themes are given he requests one of the candidates to pick out one of the envelopes and the theme in that envelope will be the one upon which the examination is held.

ARTICLE 36

During the written examinations the candidates are not permitted to communicate among themselves either verbally or in writing, or in any way to communicate with others, except those in charge of supervision and with the members of the examining commission. They should not bring notes, books, or publications of any kind, not even the paper upon which to write; their answers, under penalty of being rejected, should be made exclusively on paper stamped with the seal of the office and signed with the signature of one member of the examining commission or of the supervising committee. They may only consult the books funished them by the commission, the laws and decrees in the official file, the dictionary, and other publications which the examining commission will allow unless otherwise provided by the president thereof. Candidates who fail to follow these regulations are excluded from the examination. The examining commission or the supervising committee shall see that said regulations are followed and have the authority to adopt the necessary provisions. To this end, at least two of the members of the commission or supervising committee shall be constantly in the room where the examinations are held. Under penalty of exclusion, each candidate as soon as his work is completed puts it in an envelope together with another envelope of smaller size, duly sealed, without signing his name or adding any other mark; in the small envelope he puts a sheet with his name, surname, and his father's name after which he seals also the large envelope and gives it to a member of the commission or of the supervising committee, who affixes his signature, the date, and hour on the envelope so received by him. At the end of each day all the envelopes are collected in a larger envelope, which is sealed and signed by at least one of the members of the examining commission or supervising committee and by the secretary. The envelopes are opened in the presence of the examining commission, when it reads the written examinations subject by subject.

The identification of the tests is to be made after all tests of the candidates are examined and marked. When the written examinations take place in more than one locality the tests are mailed daily in sealed envelopes to the examining commission by the supervising committee through the chief of the local office.

ARTICLE 38

A daily summary of all steps taken by the examining commission, including the rating of the tests, should be written, countersigned by all members of the commission, by the secretary, and by the supervising committee. The supervising committee also makes a daily written report of their work, signing such report and transmitting the same together with the papers of the candidates according to the last paragraph of the preceding article.

ARTICLE 39

In the competitive examination for appointment to the civil service, there are admitted to the oral examination candidates who received an average of at least 70 per cent in the written examinations and at least 60 per cent in each of such examinations. The oral examination is not considered passed if the candidate did not obtain at least 60 per cent. The final grade is found by adding the average grades received in the written examinations with those obtained in the oral examination. The grading of the successful competitors is made according to the final grade; in case of tie, preference is given to the candidate senior in years, unless otherwise provided by special regulations.

ARTICLE 40

Competitive examinations for distinct merit, for promotion to the ninth grade of the rolls, belonging to Groups A and B and the competitive examinations for promotion to Grade XI belonging to Group C are composed of written examinations and one oral examination, according to the program established by the regulations of each department.

For the merit examination the written tests cannot be less than four, and for the fitness examination they cannot be less than three. In each case one of the written tests must be of a practical character on matters regarding the services of the department to which the employee belongs. For the competitive examination for promotion to the eleventh grade of the rolls belonging to Group C the written examinations are two, one of which shall have a practical character relating to the service in the particular branch to which the employee belongs.

ARTICLE 41

In the examinations for merit and for fitness for promotion to the ninth grade for those belonging in the rolls A and B the examining commission is organized as provided by the regulations of each department. It may not be composed of less than three or more than five members including the president. In such number are not included additional members for the foreign language or for special subjects as may be required by special regulations. The secretary of the commission will be an employee of the ministry of a grade not below the ninth in the competitive examination for the promotion of those belonging to Group C. The examining commissions are presided over by an officer of Group A having a grade not below the sixth and are composed of two officers of Grade A, or if necessary of Grade B; all members of the commission should belong to the ministry to which the candidates belong. The secretary of the commission is an employee of the same ministry of a grade not below the ninth.

ARTICLE 42

Candidates who have received an average of 80 per cent in the written test and not less than 70 per cent in each examination are admitted to the competitive examination for merit. The oral examination is not considered passed unless the candidate obtains at least a mark of 80 per cent.

[Supplementary rules of admission and grading omitted.]

ARTICLE 43

[Supplementary rules of admission and grading omitted.]

ARTICLE 44

The minister approves the regularity of the preceding examination and decides definitely contests relating to the precedence of the candidates. The ranking of the winners in the competitive examinations approved by a ministerial decree is published in the official bulletin of the ministry.

ARTICLE 45

[Refund of traveling expenses incurred in taking examinations.]

CHAPTER VII. RESIGNATIONS, DISCHARGE FROM SERVICE, REINSTATEMENT, PERMANENT DISCHARGE

ARTICLE 46

The resignation of an employee shall be made in writing and will not take effect unless accepted.

The employee who tenders his resignation is required to remain in office and perform his duties until he is advised that his resignation has been accepted. Acceptance may be delayed or refused for grave service reasons and may also be refused when there is pending a disciplinary proceeding against the employee.

An employee is automatically considered to have resigned: (1) when he loses Italian citizenship; (2) when he accepts a mission or employment from a foreign government without first having been authorized by the national government; (3) when, without plausible reasons, he does not enter upon his duties within the time specified, or remains absent from office for a period of more than ten days, unless otherwise provided by more restrictive regulations of the different departments to be established by royal decree, after prior deliberation of the council of the ministry.

ARTICLE 47

Employees who voluntarily leave the office or undertake other work in such a way as to interrupt or hamper the regularity of official service are declared to have resigned without prejudice to penal action, as well as the instigators thereof.

The minister, however, having considered the individual's condition and personal responsibility, may enforce in this case suspension from the grade and salary, definite exclusion from promotion, delay in promotion and salary increments, or discharge.

In each case and independently of the provisions of the foregoing paragraphs, the employee's salary is suspended for a period of time equal to that of other violations of other official duties by ministerial decree, said violations having been ascertained from the chief of the office or chief of the service or an inspector.

ARTICLE 48

The provisions of the preceding Articles 46 and 47 are applied without intervention of the council of administration.

When, however, there are instigators involved who committed an offense without interruption of service the ascertaining of the facts is to be made by the council of administration.

ARTICLE 49

Accepted resignations, and those automatically declared, cause the loss of all right to pension or indemnity.

ARTICLE 50

The dispositions of the previous articles of this chapter, as far as possible, are also applied to temporary employees.

ARTICLE 51

Employees who are recognized as incapacitated for reasons of health or otherwise are discharged from service.

An employee who is unable to fulfil the duties of his grade can also be discharged, unless the administration believes that it can use him in the grade immediately lower. In this case the employee is entitled to the salary and supplementary salary of active service prescribed for this last grade, according to the seniority of appointment to such grade.

Discharge can also be ordered when it is necessary in the interest of the service. The discharge of employees having a grade higher than the fifth is considered by the council of ministers.

Discharge of employees of a lesser grade is considered by first taking the opinion of the council of administration. The reason for the discharge shall appear on the order thereof, in which also, according to the case, a notation shall be made of the consideration of the council of the minister, or of the opinion of the council of administration. In cases of discharge for health, the reasons of the employee's condition shall be ascertained by a medical examination by the medical staff.

ARTICLE 52

A certain time is given to employees proposed to be discharged from the service in which, if they deem proper, they may present objections to the secretary of the president of the council of ministers, for employees of a grade higher than the fifth, and to the competent personnel office, for employees of a minor grade. To the latter shall also be communicated the date of meeting of the council of administration, in order that they may be heard personally if they deem proper.

ARTICLE 53

Employees whose resignations were accepted, who were declared dismissed from office for other reasons than the loss of citizenship or those indicated in the preceding Article 47, and retired employees on pension may be reinstated in service, after consideration of the council of ministers, if employees of a grade higher than the fifth, or after the opinion of the council of administration for the employees of a minor grade.

Employees readmitted are registered in the grade to which they formerly belonged, occupying the last place.

Employees separated from service on account of exceptional transitory provisions may not be readmitted.

ARTICLE 54

One who obtained employment by producing invalid documents, or who failed to tell of circumstances which would have barred him, or who engaged in any illicit practice, is immediately discharged after the necessary investigation; such discharge does not make him or her immune from penal proceedings. In this case it is not necessary to have the opinion of the disciplinary commission nor that of the council of administration. The discharge is disposed of by ministerial decree published in the *Gazzetta ufficiale*. The employee discharged from the service by reason of this article has no right to pension or indemnity, nor can he enter any employment in the administration of the state.

PART II. DISCIPLINE

CHAPTER VIII. DISCIPLINARY SANCTIONS

ARTICLE 55

Employees who violate their duties of office, or who fail to perform their duties in whole or in part, are subject to the penalties referred to in the following articles, without prejudice to any eventual penal action. Temporary employees are also subject to the same disciplinary rules in so far as applicable to them.

ARTICLE 56

The penalties are: (1) censure, (2) reduction of salary, (3) suspension from grade with deprivation of salary, (4) revocation, (5) discharge. The minister imposes the first two penalties upon the chiefs of the central and local offices who depend directly upon the central authority, and, in any case, upon employees of a grade higher than the fifth. The other three penalties are imposed by ministerial decree upon a motivated recommendation of the disciplinary commissioner, except in the case mentioned in the second paragraph of Article 63. For employees of a grade higher than the fifth the functions attributed to the disciplinary commissioner are exercised by the council of ministers, unless otherwise provided by special regulations.

ARTICLE 57

To the wife and minor children of an employee suspended from grade with deprivation of salary, there is assigned an allowance for their support not to exceed one-third of the salary, excluding the supplements for active service.

ARTICLE 58

Censure is a declaration of blame, and is inflicted (*a*) for negligence in service or for slight violations, even on leave; (*b*) for unjustified absence from office; (*c*) for soliciting recommendations.

ARTICLE 59

Reduction of salary cannot be more than one-fifth nor continue for more than six months, and is inflicted for (*a*) repetition of offense for which the employee was previously subjected to censure, or excessive violation thereof; (*b*) incorrect conduct toward superiors, colleagues, subordinates, or the public; (*c*) slight insubordination; (*d*) violation of Article 96 of the present decree; (*e*) irregular conduct; (*f*) failure to observe official secrets even though the offense did not have damaging consequences; (*g*) toleration of irregularity of service or acts of insubordination, and incorrect conduct or abuses by subordinates; (*h*) manifestations, acts, or deeds inconvenient to the political, social, and administrative co-ordination of the state. Reduction of salary implies also the proportional reduction of the supplement for active service. Such reduction also applies to delay the periodical increment for a period equal to its duration.

ARTICLE 60

Before inflicting one of the foregoing penalties the chief of the office shall invite the employee to justify himself. The penalty, with statement of reasons, shall be communicated in writing to the interested party. A copy of such communication is immediately sent to the personnel office together with the defense if presented in writing, in order to be made part of the personnel file of the employee.

ARTICLE 61

Appeal against the decisions of the chief of office inflicting the penalty of censure or reduction of salary is allowed to the minister within fifteen days from its communication. The minister decides upon written recommendations of the disciplinary commission.

ARTICLE 62

Suspension from grade with deprivation of salary may extend from one to six months and implies separation from office; it is imposed for (*a*) repetition of facts which have already given reason for reduction of salary, or major violations contemplated in Articles 58 and 59 of the present decree; (*b*) openly or secretly making or participating in the publication of disloyal criticism of the administration or superior officers or diminishing the prestige of the state; (*c*) any violation which shows unreasonable conduct, lack of honesty, or grave abuses; (*d*) grave insubordination; (*e*) violating official secrets and causing serious consequences; (*f*) prejudice to the interest of the state or individuals in relation to the state, caused by neglect of official duties; (*g*) offense to the dignity of the administration; (*h*) use of employment for personal benefits; (*i*) any collective action tending to exercise pressure on the action of a superior or diminish the authority of superiors; (*j*) defamation of the administration and of superiors.

ARTICLE 63

When justified by the facts, the minister may order suspension from grade with deprivation of salary for an indeterminate period, even before a disciplinary proceeding is started or concluded. An employee on trial for crime may be suspended from grade with deprivation of salary; he shall be immediately suspended when there is a warrant for his arrest. In this last case, the suspension is enforced by an order of the chief of office. If the penal proceeding is followed by a definite sentence or decree which acquits the defendant either as innocent or by reason of facts now existing, his suspension is revoked and the employee retains the right to the salary not collected. At the end of the proceeding, when the administration believes that facts and circumstances emerged from the penal proceeding which make the employee subject to disciplinary punishment, the administration can act according to the dispositions of the present chapter. The same rule applies also in case of acquittal if the acquittal is the result of non-private prosecution. When, by the application of these regulations, the employee is punished by suspension from grade with deprivation of salary, the period of suspension is computed. If he received a minor punishment, or the period of suspension from grade with deprivation of salary is less than the actual suspension, he shall receive salary withheld in whole or in part, as the case may be, any amount paid to his family for support, however, being deducted.

In the case mentioned in the first paragraph of the present article, if the disciplinary proceeding is ended by acquittal of the employee, the suspension is revoked and the employee has the right to the salary withheld. If, however, the employee received a minor punishment, or suspension of less duration than that received, the regulations of the preceding paragraph are applied.

An employee sentenced to a penalty restricting his personal liberty is suspended from grade with deprivation of salary until he has served his sentence. The revocation of suspension from grade and deprivation of salary automatically gives to the employee his lost seniority, and the first vacant place in the higher grade shall be given to the employee suspended, always provided he is recognized as deserving such promotion according to the prescribed forms.

ARTICLE 64

Independently of any penal action an employee incurs revocation for (*a*) repetition of offense which previously gave reason for suspension from grade with deprivation of salary, or for serious offense as indicated in Articles 58, 59, and 62; (*b*) serious abuse of authority; (*c*) serious abuse of trust; (*d*) failure to observe official secrets causing great prejudice to the state or individuals; (*e*) offenses against honor, or any other offense which shows lack of moral responsibility; (*f*) violation of oath either in one or more instances and conduct which fundamentally contradicts such oath.

ARTICLE 65

Independently of any penal action, discharge is made for (*a*) more serious offenses than provided in the preceding Article 64; (*b*) illicit use or peculation of administered funds kept on deposit or toleration of such abuses by subordinates; (*c*) accepting any compensation or participating in any benefits, or otherwise benefiting from official business; (*d*) fraudulent violation of official duties with prejudice to the state or individuals and with the danger of affecting the public safety; (*e*) serious acts of insubordination against the administration or superior officer, made publicly, with evident offense to the principal of discipline and authority; (*f*) instigation of collective insubordination; (*g*) offenses against the person of the king, or the royal family, or public manifestation of ideals contrary to existing institutions.

ARTICLE 66

Without any disciplinary procedure discharge is made forthwith for (*a*) any sentence received for crime against the mother-land or against the powers of the state, or against good custom, or for receiving stolen property, extortion, corruption, falsity, theft, swindle, and illegal appropriation; (*b*) any sentence which calls for perpetual exclusion from public office or for special vigilance by police authorities.

ARTICLE 67

An employee discharged may not be readmitted to the service except when, in the opinion of the disciplinary commission, the charge which gave rise to the revocation or discharge is recognized as baseless. In such a case, the council of administration examines the reasons and circumstances which determine the facts and give its opinion as to the position to be given on the lists to such employee, excluding, however, any salary in arrears.

ARTICLE 68

Attached to each ministry is instituted a disciplinary commission to be appointed annually by the minister. Such commission comprises three employees engaged in such ministry, of whom one is of a grade not below the fourth, who is president, and of whom two are chosen from among employees belonging to Grades V and VI. There are also appointed two substitute members from among the employees of said Grades V and VI. In case of absence or inability of the president, the senior member will take his place and in his turn will be replaced by one of the substitute members. An employee of the ministry, of a grade not below the ninth, acts as secretary.

Employees under special regulations have their own council of administration, or disciplinary commissions in the foregoing form may be constituted. When, however, in the group there are no employees of the fourth grade or higher, the commission is presided over by the senior employee of the highest grade. When, during the year, any member of the commission ceases his service, a substitute is selected for the remainder of the year. If the employee member of the disciplinary commission is subjected to disciplinary action, he is automatically dropped from said commission.

ARTICLE 69

In case of disciplinary offense, the chief of office is required to impose punishment if competent, or if he believes that such action is the duty of the minister, he shall report to the personnel office, transmitting the reports which he is supposed to make and investigating diligently and promptly. The personnel office having received knowledge of the facts either by said reports or otherwise, refers them immediately to the accused and proceeds with any further investigation which it deems necessary. To this end it calls witnesses and experts to testify without oath, including those presented by the accused and also inviting the accused to testify. Said office may also receive the cooperation of the public and police authorities especially with regard to the testimony of witnesses or experts. After having completed the investigations aforesaid, the office transmits the proceedings to the disciplinary commission which, if it deems necessary, requests said office to make further investigations, or decides the matter giving immediate notice to the personnel office.

ARTICLE 70

Whenever necessary to question the accused, he is allowed ten days from the date of receiving notice to present his defense. He gives receipt for the notice containing the accusation which is immediately sent to the personnel office. Refusal by the accused to receive the notice, or give receipt, is mentioned in writing by the chief of office delegated to make such notification. If for any other reason notification is not possible, it is then made by sending it in registered envelope with return receipt. The personnel office may, for cause stated, extend the term of ten days given to the accused for preparation of his defense. The accused may renounce said term, if he so desires, in writing.

ARTICLE 71

When the act charged to the employee has given rise to a judicial action the disciplinary proceeding is suspended; the duties of the public offices to co-operate in the ascertaining of facts and collection of the evidence remain.

ARTICLE 72

During the period of investigation the accused may be authorized to make a partial or total examination of the files in his case. At the completion of the investigation the accused has the right to examine and receive a copy of the report.

ARTICLE 73

The secretary of the disciplinary commission shall give notice to the personnel office and to the accused of the date set for the oral proceeding. The oral hearing cannot take place before five days from the date on which the accused has received notice if he resides in the capital, or before fifteen days if he resides elsewhere. The personnel chief or his substitute takes part in the hearing as relator. The accused has the right to be heard personally.

ARTICLE 74

At the end of the oral hearing the commission, after excluding the personnel chief and the accused, proceeds to its decision. When there are several proposals, the president places on the ballot the least favorable to the accused and successively, if necessary, other proposals. Voting takes place in reverse order of grade and seniority of the members of the commission. The commission should reach its decisions according to the free judgment of each commissioner, acquired from the conscientious examination of all the facts brought out during the oral hearing and obtained from the files, taking also into account anything which results from penal proceedings, if any. The commission, when it believes that the employee is guilty, but not punishable by more than a reduction of salary, may propose that this penalty or censure be inflicted.

A summary is made of the oral hearing and of the recommendation of the disciplinary commission signed by president and secretary. The original of such summary, together with the documents of the proceeding, is preserved by the commission, and copy thereof is sent to the personnel office for further disposition.

ARTICLE 75

The recommendation by which punishment is inflicted, upon proposal of the disciplinary commission or by deliberation of the council of ministers, is adopted by ministerial decree even when the punishment is less than suspension from grade with deprivation of salary. A ministerial decree is also made when the employee is found innocent of the charges brought against him. Punishment adopted by decree of the minister is definite, and should be notified to the interested party within five days of its date.

ARTICLE 76

If the residence of the accused is not known, notice as provided in the present chapter is delivered to him by publication in the official bulletin of the ministry or in the *Gazzetta ufficiale.* Insertion in the *Gazetta ufficiale* is free of charge.

ARTICLE 77

An employee subjected to disciplinary proceeding, who appeared before the disciplinary commission to present his case, and upon whom no punishment was imposed, has the right, if residing outside the capital, to refund of traveling expenses.

ARTICLE 78

The proceeding may be reopened when there are new facts and evidence such as to offer presumptive guilt of the employee; the proceeding may also be reopened if the employee against whom a penalty more severe than reduction of salary was imposed, or his widow or minor children who might have a right to consideration, produce new facts or evidence such as to warrant imposition of a minor penalty, or withdrawal of charges. Rehearing is decided by the minister upon report of the personnel office. Rehearing suspends the punishment already imposed.

ARTICLE 79

In case of rehearing at the request of an employee, or of his widow or minor children, a punishment greater than that already imposed cannot be inflicted. If acquitted or given a minor punishment, he is entitled to full or partial payment of the salary withheld if the preceding punishment was deprivation or reduction of salary except all amounts paid to wife and children for their support. This regulation applies also when the rehearing was requested by the widow or minor children.

ARTICLE 80

Two years at least after disposition of a case, if the employee has given clear evidence of reform, the effects of any penalty may be made void, excluding any retroactive applications, in so far as subsequent ratings are concerned, which may be modified by the council of administration. This action is taken by ministerial decree with the opinion of the council of administration and the disciplinary commission.

PART III. TEMPORARY DISCHARGE, SUSPENSION, FURLOUGHS

[Omitted.[1]]

PART IV. SPECIAL MISCELLANEOUS DISPOSITIONS

Chapter I. Incompatibility; Accumulation of Offices; Transfer of Employees to Other Offices or Other Administrations

ARTICLE 96

The status of civil employees of the state is not compatible with any private employment, the pursuit of any profession or commerce or industry; the office of administrator, member of the board of directors, commissioner, superintendent, or similar position, with or without salary, in any firm, society, or organization organized for profit; however, the employee may, having first obtained authority from the minister or head of the office, belong to the administration of co-operative societies organized among employees. Also is prohibited any occupation or action which, in the judgment of the minister or of the chief of the office, is not reconcilable with the duties of office and with the dignity of the administration, or that the minister does not believe appropriate. Employees may be chosen as arbiters or experts first having obtained authority from the minister or of the chief of the office to be granted case by case.

The chiefs of the office are responsible for omitting to report cases of violation of the preceding paragraph which come to their attention. The provisions of the first paragraph of this article are not applicable in case of the administration of a society in which the state is a stockholder, nor in the administration of societies for which special regulations or conventions reserve the appointment of certain offices to the state.

ARTICLE 97

Employees who receive salary from the state cannot cumulate other salaries from the state, from provinces or townships, from public institutes, or from legally recognized semipublic institutions, or any other administration guaranteed support by the state, unless otherwise provided by special legislation. This regulation applies only to permanent and organic offices whether of the state or of the said organization, to which there is attached an established salary.

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[1] By Article 81, furlough is granted to employees in case of election to the chamber of deputies, without pay; Article 86 safeguards reinstatement to civil position.

ARTICLE 98

The position of member of a superior council is not considered as an employment in the application of the preceding article. For the members of the teaching or sanitary corps the office of director or associate, under any denomination, in scientific or literary establishments, or in the clinics to which they are attached is not considered an employment.

ARTICLE 99

In the case of cumulation allowed by law, the salary is reduced when the sum of the two salaries exceeds 12,000 lire. When each of the two salaries is below 12,000 lire, and the sum is more than said amount the surplus is reduced by one-third. When one or both of the salaries exceed 12,000 lire, the lesser salary is reduced by one-third, or either in case they are of an equal amount. These reductions are returned to the state treasury.

ARTICLE 100

The chiefs of the offices, institutes, or public establishments are required, under their personal responsibility, to report to the competent minister, who in turn reports to the court of accounts cases of cumulation of employment by their subordinates.

ARTICLE 101

The transfer of employees from the rolls of provincial departments to the respective central departments, or vice versa, is prohibited, and the transfer to offices of other departments whether those of the state or otherwise, even if in the same locality, is also prohibited unless otherwise provided by special legislation.

In a purely exceptional way, the transfer of employees of a grade not below the sixth may be allowed when such transfer is requested by a specific authority. In such case the transfer is authorized by a royal decree on the proposal of the respective minister in agreement with the minister of finance, having first heard the council of ministers. In the departments having one roll for the personnel of the central or other offices the division of the personnel for the various grades among said offices is governed by royal decrees on the proposal of the respective minister in agreement with the minister for finance. Employees or agents in excess of the number specified according to the preceding paragraphs may not be assigned to the central offices or other offices.

THE ROUMANIAN CIVIL SERVICE

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INTRODUCTION[1]

The position of civil servants in Roumania before 1923 was not regulated in a uniform way. Certain bodies of officials had a special legal régime such as the technical body (civil engineers), the state teaching body, the doctors, who enjoyed either complete or substantial freedom from removal. The judges, although appointed by the executive power as in France, were considered as forming the judicial power and were free from removal. The rest of the state officials were subject to removal.

The law of June 19, 1923, on the status of public officials, creates for all civil servants a well-defined legal situation in so far as recruitment, promotion, and retirement are concerned, and offers to officials who do not enjoy freedom from removal a situation scarcely less desirable, which the law calls "stability."

The necessity for this legislation was widely felt. Public officials have demanded it consistently, at times even violently. The government was forced to pass the law in order to calm excited minds who were threatening a general strike of civil servants.

In Article 1 the law defines public officials; the definition is not reproduced as it is found in the text of the law at the end of this Introduction.

The legal nature of the connection existing between the state and the public official is considered differently by different courts. The first chamber of the court of cassation decreed on April 5, 1888 (Decision 92), that public officials are servants of the king, who appoints them by decree. Consequently the general principles of *mandat* are to be applied to them.

We do not think that such a statement is exact, for the position of the civil servant is not the result of a contract, as there is no exchange of consent upon appointment. The person appointed to a public position does not secure power from the physical person who appoints him but from the law. The law organizes the position with the powers and obligations which it considers useful for the public corporation. It is a general arrangement, and all qualified persons may hope to occupy this office.

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[1] Translation by Leonard D. White from a French manuscript.

But in order for any person to exercise official power one fact is necessary: appointment either by an electoral body, or by another person, or by chance as in drawing lots, which happens in the case of jurors in the assize courts or the appointment of a councilor of the appellate court to preside over an assize court or an electoral bureau.

RECRUITMENT OF CIVIL SERVANTS

The new law deals with the recruitment of public officials. It requires a certain degree of knowledge, the possession of which the candidates must demonstrate by passing an entrance examination one year after assuming the duties of office.

The government has not taken the occasion to organize a system of professional training for public officials.

The multiple and varied interests which have to be looked into and dealt with by the administrative officials were not considered so important by the state, and in the case of the less important officers no special preparation was required. For the high officials a law-school diploma (*diplôme de licence*) was held scarcely sufficient.

While the state has taken pains to organize schools for agriculture, for commerce, and for various occupations, it does not yet think of establishing a school to train the administrative personnel. The University of Bucharest on many occasions has referred to the necessity of offering such instruction; the government did not or could not yield to these repeated demands.

That is why the Roumanian Institute of the Administrative Sciences founded in October, 1928, a school of documentation and of administrative studies. Laid out on a large scale, it has already fifty professors and lecturers. As soon as the school was announced, requests for admission came in from all sides. At the end of two weeks, the number of students greatly exceeded two thousand, almost all public officials who wished further education.

The school is divided into two sections, a lower section for officials who have not finished secondary education and a specialized section for officials holding the Bachelor's degree.

In the latter section the courses are of two kinds: first, obligatory courses for all students, and, second, courses dealing with special fields—the general administration group, the fiscal group, the statistical group, the urban problems group, and the political group of courses.

In this school practice is combined with theory. The students are expected to visit different public services. Those who are not civil servants are expected to work in the departments during the vacation; the management of the school organizes excursions into the interior so that students may visit different cities in order to observe the operation of the external service. It desires also to organize similar excursions in other countries.

The law on the status of civil servants requires an examination of capacity for all who desire to enter the public service. This examination is passed before a commission composed of officials of the department which the candidate desires to enter.

Appointment is not definitive until the end of the year and only after the candidate has been found satisfactory by the commission for appointments and promotion.

"STABILITY" AND IMMUNITY FROM REMOVAL ("STABILITÉ ET INAMOVIBILITÉ")

Civil servants, properly so called, enjoy "stability." By stability we understand the legal situation of the civil servant who cannot be removed or punished except after having been found guilty by a disciplinary board established by law. But the civil servant who enjoys stability can be transferred in the interest of the service by higher authority but with the approval of the commission on appointments and promotion. It is at this point that we find a difference between stability and immunity from removal. Civil servants immune from removal cannot be transferred without their consent even by way of promotion. Thus judges, who belong to this category, cannot be promoted against their will; so also with university professors and professors in the secondary schools, etc. The court of cassation has decided in this sense on many occasions.

STATUS OF CIVIL SERVANTS

We understand by the status of civil servants the totality of the numerous rules which comprise the legal situation of civil servants in fixing their rights and their obligations.

The law of June 19, 1923, establishes a status in this sense that it fixes the conditions of recruitment and promotion (Articles 37–48), of transfer (Articles 49–50), of discipline (Articles 51–61), of salaries, of pensions, of retirement, of vacations (Article 16–23). It is true that similar norms existed before the law of June 19, 1923; they were found in the special laws organizing different services and even in administrative regulations. The constitution of July 1, 1866, Article 131, paragraph 5, proclaimed the necessity of drawing up a general law on the conditions of admission and promotion in the public service. Such a law, however, was never enacted until the present constitution was put into force.

The new Roumanian constitution of March 29, 1923, contains no provisions on this subject; under its aegis, however, the law of June 19, 1923, has been enacted.

The conditions laid down by the law on the status of civil servants are general, applicable to all civil servants, with the exception of those indicated in Article 2, that is to say, those who occupy a political or elective office, such as ministers or mayors; the law also excepts the metropolitans, the bishops, officials of the legislative body, specialists appointed by contract if they are not citizens, such as physicians, consulting architects, professors, etc. Various laws for special services complete the status of civil servants. Such are the law on the organization of the judicial authorities, the law on higher education, the law on secondary education, the law on the organization of the court of accounts.

FIXING OF SALARIES BETWEEN THE PUBLIC AUTHORITY AND THE CIVIL SERVANT

Relations exist between the public authority and the civil servant which give the administration the right to demand certain services from the civil servant.

The civil servant who is expected to devote all of his time to the fulfilment of the duties of his office receives from the administration a wage or salary.

This payment does not vary according to the efficiency of the civil servant or according to the quantity of work done by him; neither does it vary according to the law of supply and demand; all officials of the same grade receive the same payment.

In general, the salary of civil servants is less than the equivalent of the work performed, especially today after depreciation of the currency (the leu represents only one-thirtieth of its former value). If civil servants were paid the pre-war salaries it would be impossible for them to live. The state gives them a bonus called "cost-of-living bonus," which, it must be said, is wholly insufficient. Thus a civil servant who before the war received 700 gold leu a month receives today 14,000 leu, which represents the pre-war salary multiplied by twenty, while the value of the currency has decreased thirty times at least and the index of the cost of living shows that the cost of living has increased at least 20 per cent on a gold base, which brings it about that the civil servant does not receive a sufficient salary, even with all the increases granted.

Civil servants at a certain age are retired from active duty. For administrative offices this age is sixty years. But the pension law permits a civil servant to retire at fifty-seven years. On retirement the civil servant receives a pension if he has twenty years' service. This pension is increased if the official has a greater number of years' service. The family of the civil servant, that is to say, wife and minor children, receive a pension in case of the death of the official even if he has had only fifteen years' service.

The new Roumanian government taking office in November, 1928, has appointed a commission to draw up laws on the organization of departments.

Up to the present moment each ministry has a different organization. The preliminary draft of the bill as it has been worked out by the commission lays down the general principles applicable to the organization of all ministries, establishes the different divisions of each department, after examining the central service and the external service. The operation of each service forms a special chapter.

As president of this commission, I think that the bill satisfies all requirements according to the principles of Fayol and Taylor, applied with success in the ministry of agriculture of Belgium. Each division is to establish its program, each director is to collaborate with his subordinates, call them together periodically in a conference, discuss with them all important problems concerning the service and all difficulties observed in the course of the preceding period.

The office of president of the council of ministers is set up as an organ of co-ordination for the work of all the departments. For this purpose has been organized an interdepartmental service including an interdepartmental committee formed by the directors of all the ministries.

With the purpose of co-ordinating the activity of the public service an economic commission has been established, including the departments of finance, agriculture, commerce and industry, communications, and national economy under the presidency of the latter. This commission is to develop the economic program of the government and to co-ordinate economic activities.

The government proposes to modify the status of civil servants according to new principles; it also wishes to reduce the excessive number of civil servants in order to relieve the budget and to increase the salaries of the remainder. But these are projects which it is to be hoped will be realized before the opening of the International Congress of the Administrative Sciences.

LAW OF THE STATUS OF CIVIL SERVANTS, JUNE 19, 1923

PART I. PROVISIONS APPLICABLE TO ALL CIVIL SERVANTS

Chapter I. General Provisions

ARTICLE 1

Civil servants comprise Roumanian citizens of both sexes who hold a permanent public office (civil or ecclesiastic) in the state, in the department, in a commune or in an institution whose budget is submitted to the approval of the chamber of deputies, the government, or departmental or communal councils.

Possessing this status, they enjoy the rights and are subject to the obligations specified in the present statute.

ARTICLE 2

The provisions of the present law do not include:

a) Political and elective positions. Career civil servants who temporarily are responsible for a political office resume their full status upon retiring from the temporary political post.

b) Metropolitans and bishops.

c) Officials of the legislative bodies who have a special status within the internal organization of each legislative body.

d) Foreigners who perform a public function either temporarily or on the basis of contract as specialists.

e) Laborers as well as the personnel hired for a definite period of time or for a certain piece of work.

So far as the personnel of the permanent public services is concerned, a regulation will fix their normal methods of admission, their rights, and their duties.

ARTICLE 3

No public office can be created or discontinued except by virtue of a law.

ARTICLE 4

Civil or ecclesiastical offices whose duties are governed by special laws retain the situation which results from these laws in so far as they do not violate the provisions of Articles 1–32 of the present law.

Chapter II. General Conditions of Admissibility to Public Offices

ARTICLE 5

Civil servants must be citizens, at least twenty-one years old, of good health, and must not have been convicted for grave offenses.

Men must have fulfilled the requirements of army service and enjoy all civil and political rights.

ARTICLE 6

Public officials upon entering upon their duties must take the oath of loyalty to the king and to the laws of the country.

Chapter III

ARTICLE 7

Permanent civil servants, if they are not immune from removal, enjoy *stabilité.*

Permanent civil servants cannot be transferred, punished, or discharged except according to the conditions provided in the organic laws of the departments to which they belong.

For administrative officials in general, these conditions are set out in the second part of this law.

Chapter IV. Obligations and Responsibilities

ARTICLE 8

Civil servants who perform their work in departmental offices are required to work seven hours a day, in conformity with the schedule fixed by regulation. Civil servants of specialized bodies will have a special schedule.

ARTICLE 9

Legal holidays of the public service include New Years, Epiphany, St. Johns, the Anniversary of the Union of the Principalities (January 24), Annunciation, five days for Easter, St. George, Ascension, Holy Trinity, May 10 (*fête nationale*), SS. Constantine and Helena, SS. Peter and Paul, the Exaltation of the Cross, St. Demetrius, St. Michael, St. Nicholas, four days at Christmas, and every Sunday.

ARTICLE 10

Civil servants must reside in the locality where they perform their duties.

ARTICLE 11

Civil servants are obliged to avoid public or private conduct which compromises the official body to which they belong.

ARTICLE 12

A civil servant who resigns cannot leave the service before his resignation is accepted and before having received a discharge, under penalty of administrative discipline.

ARTICLE 14

When a civil servant performs an act, either in excess of his legal powers or in abuse of power, and this act damages an individual who demands reparation from the administration, the administration can hold the civil servant who has performed the act in question financially liable.

The civil servant against whom an unjust claim is made is entitled to demand damages at law.

CHAPTER V. INCOMPATIBLE OFFICES

ARTICLE 14

Civil servants cannot hold two offices at the same time. An exception is made as allowed by the law of cumulation. Civil servants cannot engage in business. They cannot be contractors or farmers; they cannot engage in the service of other offices or private institutions without the authorization of the chief of the service, based upon a favorable opinion given by the appointment and promotion commission.

They cannot manage the affairs of private persons if there is any connection between these affairs and the duties which they perform.

They cannot participate as director, administrator, or *censeur* of a financial, industrial, or commercial company without the authorization of the head of the service based upon a favorable opinion of the appointment and promotion commission and only as the work of these companies has no connection with the public service.

The absolute prohibitions established by law for certain groups of civil servants remain in force.

Civil servants who violate these regulations will be taken before the disciplinary commission.

ARTICLE 15

Outside the exceptions provided by the law of elections, no civil servant can be elected deputy or senator.

ARTICLE 16

Civil servants are entitled to a salary corresponding to the grade or the office which they occupy. In addition to the salary, they are also entitled to a housing bonus, varying according to the *l'état civil* and the locality where they reside.

Civil servants who have children also receive a family bonus. If husband and wife are both civil servants, they each receive a housing bonus as if they were not married. If they have children, the housing bonus and the family bonus are paid only to one of the two.

By way of exception, until the stabilization of the currency, civil servants are also granted a cost-of-living bonus in proportion to the salary of the office, according to locality and in relation to the cost of articles of prime necessity.

ARTICLE 17

Civil servants who hold two or more offices have a right to bonuses as well as other supplements only for one office. For the others they receive only base pay without supplements.

ARTICLE 18

Civil servants who are transferred receive a bonus as well as removal expenses when the nature of their office involves extraordinary expenses.

The bonus is proportional to the salary and equal for all civil servants who belong to the same grade. The bonuses are fixed annually as announced in the newspapers by the council of ministers.

The bonus does not include the transportation expenditures which are calculated separately.

ARTICLE 19

Civil servants on leave from technical and specialized bodies are entitled, when performing an administrative function, to choose either the salary of their grade or the salary of the position which they occupy.

ARTICLE 20

Each civil servant is entitled to an annual leave of one month. Longer leaves are granted only in case of sickness duly certified.

When sick leave exceeds three months the salary will be reduced by half, and when it exceeds a year the civil servant will be placed on the inactive list, eligible to return to the service in case of vacancy upon restoration of health.

ARTICLE 21

A civil servant is entitled to a pension proportional to the length of service and to salary for the period of service covered by deductions.

ARTICLE 22

Civil servants are required to retire at the age of sixty completed years and are entitled to a pension from and after this date if they fulfil the conditions provided by the general pension law, unless there are organic laws which have fixed a different age limit.

In the case in which the age limit is sixty completed years and the civil servant has not completed the service required for pension, an extension of one year can be given him in conformity with an opinion of the commission.

ARTICLE 23

The civil servant who becomes incapable or unfit for service will be retired after taking the opinion of the disciplinary commission, given on the basis of a report of the medical commission provided in the general pension law.

CHAPTER VII. ASSOCIATIONS OF CIVIL SERVANTS

ARTICLE 24

Civil servants of all categories may form associations of their own number for cultural, economic, and professional purposes.

ARTICLE 25

Associations of civil servants of different services may unit among themselves, keeping always their professional, cultural, and economic character.

These associations may secure legal personality by means of a statute, following an opinion of the high administrative council.

ARTICLE 26

Associations of civil servants are forbidden to discuss or to pass resolutions of a political character. They can discuss only questions which are related to their profession.

ARTICLE 27

The funds of associations will derive from dues of members, sums secured from benefits, donations, inheritances, etc.

ARTICLE 28

Any association which violates the provisions of the preceding articles may be dissolved by action of the council of ministers, if it does not possess legal personality, and by royal decree, if it possesses legal personality; in either case the opinion of the higher administrative council will be taken.

ARTICLE 29

Associations of civil servants comprise civil servants in active service, as well as those who, being members, have become pensioners.

ARTICLE 30

Discontinuance of work by civil servants, whether partially or completely in accordance with a prior understanding, collective or individual resignations at the same time or at close intervals, constituting a desertion of duty which imperils the general public interest, are punished by removal.

ARTICLE 31

Any person or persons found guilty of having instigated and prepared a strike of civil servants, or having quit the service under conditions foreseen by Article 30, or who by their attitude seek to prevent the regular operation of the service will in addition to being discharged, be prosecuted before the correctional courts which may condemn them in case of guilt to imprisonment of not less than three months or more than two years, and to a fine of not less than 1,000 nor more than 10,000 lei.

ARTICLE 32

If the discontinuance of service is the consequence of a decision taken by an association of civil servants, the association will be dissolved. The ring leaders will be prosecuted and punished according to the terms of the preceding article, and the funds of the association will be confiscated and applied to welfare institutions of the locality.

PART II. GENERAL PROVISIONS

Chapter I

ARTICLE 33

The following provisions apply to all civil servants except magistrates, members of the diplomatic and consular service, members of the teaching and ecclesiastical bodies, and the members of all technical and specialized bodies which remain subject to the respective regulations of their organic laws, and also the officials of the legislative bodies whose organization is fixed by the internal organization of each of the legislative bodies.

ARTICLE 34

The public services are divided into central, departmental, and municipal bodies.

In the central organizations, positions according to their grade are arranged as follows: director-general, underdirector-general, director, underdirector, service chief, bureau chief, under bureau chief, clerk (*commis*), and probationary clerk. Offices are divided into classes in conformity with the special laws of the organization.

The offices of inspector-general, inspector, and underinspector are classified and ranked by law.

The terminology of administrative bodies in the external service and in the local offices is fixed by the organic laws of each authority, adopting as far as possible the terminology and the ranks used for the central offices.

ARTICLE 35

Positions of a special character, such as librarian, registrar, supervisor of archives, will be filled by authority granted by the head of the respective service, by a civil servant of the grade of service chief.

Chapter II. Prerequisites of Appointment

ARTICLE 36

In addition to the general prerequisites provided by Article 5, holders of positions higher than that of an under bureau chief must possess a university diploma or a diploma of an equivalent higher school; for other positions at least the *lycée* or an equivalent school.

In case there are no candidates with university diplomas, there are admitted into the external services and local services to positions higher than that of under bureau chief or equivalent positions students who have finished the *lycée;* and for positions lower than that of bureau chief, those who have finished the lower secondary school or equivalent.

The absence of candidates with degrees will be certified by the minutes drawn up by the respective authority after fifteen days' publication of the vacancy.

CHAPTER III. APPOINTMENT AND PROMOTION

ARTICLE 37

Nobody can be appointed to a public office except on the basis of an examination.

Civil servants who are appointed are considered probationers for one year. Those who are found capable after the expiration of this period by the appointment and promotion commission are given permanent appointments.

The commission takes action on the basis of reports of the supervisors of the civil servant. Supplementary years' probation will be required from civil servants who are not judged fit to obtain permanent appointment. If then they are not found suitable for permanent appointment they are discharged.

Appointments or probationary assignments of permanent civil servants are made in the order of classification and in accordance with vacancies.

ARTICLE 38

In the interest of the service, with specific statement of reason and only following the favorable opinion of the appointment and promotion commission, direct nominations can be made to prefectorate positions up to the grade of underdirector, inclusively, or in equivalent positions of specialists recognized as such, who fulfil the other legal qualifications.

The appointment and promotion commission decides upon these appointments at the expiration of one year if there is occasion to give them permanent appointment, basing their action solely upon the recommendations of the supervisory officials.

ARTICLE 39

All appointments and promotions are made with the favorable opinion of special commissions which will be created.

In the state departments, commissions will be formed in each ministry and for subordinate boards in each "direction," and will be composed of the full number of directors-general, or directors in charge of the service, under the presidency of the secretary-general.

These commissions have power over the whole administrative personnel, internal or external, which depends upon this department or "direction."

ARTICLE 40

Appointment and promotion commissions of all provincial (*départementaux*) civil servants, of urban communes which are not departmental capitals, and of rural communes are composed of three members, respectively: (1) the director of the prefecture; (2) the secretary of the departmental council; (3) a delegate chosen by the permanent commission from its number, president of the commission.

For the urban communes which are not county seats, it comprises (1) a secretary of the mayor's office; (2) the oldest chief of service highest in his grade; (3) a delegate of the municipal council, appointed by the council, who by law presides over the commission.

The secretaries of the departmental councils and of the municipal councils are appointed by their respective councils.

ARTICLE 41

Promotion from one class to another may take place after a probationary period of at least one year, and promotions from one grade to another after a minimum period of two years.

ARTICLE 42

Promotions are made on the basis of seniority. For positions below that of bureau chief inclusive, promotions are made one-half by discretion, one-half by seniority; for higher civil servants by discretion alone.

ARTICLE 43

In the central departments proposals for promotion are made by the director and for the external services by the head of the respective service.

For civil servants within departmental and communal organizations, proposals are made by the heads of the service.

For directors-general or directors at the head of the service, promotion is authorized by the head of the respective department with the opinion of the appointment and promotion commission.

ARTICLE 44

Proposals must be accompanied by written statements and evidence of qualification.

They must be communicated to the promotion commission before June 1 of each year.

ARTICLE 45

The commissions base their action upon the evidence of qualification and other inquiries, take action upon the proposals, and draw up promotion lists for all civil servants up to the grade of director, exclusively.

ARTICLE 46

The promotion lists are public. They are published in the bulletins of the various departments as well as the *Moniteur officiel.*

These lists are effective for the following year.

Those who have not been promoted in the course of the year may be proposed and admitted again to future lists.

ARTICLE 47

Promotions are made according to the order of the list.

In special services, however, the competent authority may ignore this rule but only with the favorable opinion of the appointment and promotion commission.

ARTICLE 48

Appointments and promotions up to the grade of underdirector exclusively or equivalent positions are made by decision of the minister, in positions higher than these, by royal decree.

CHAPTER IV. TRANSFERS

ARTICLE 49

Civil servants may be transferred at their request from one service to another with the consent of the head of the two services concerned.

ARTICLE 50

In the external services transfers from one section to another in the same department, as well as transfers from one department to another, are compulsory if made in the interest of the service within equivalent posts and with the favorable opinion of the appointment and promotion commission. Civil servants transferred in the interest of the service are entitled to free transportation for themselves, their family, and their luggage.

Temporary assignments are made with the same formality as transfers.

CHAPTER V

ARTICLE 51

Disciplinary punishments include: (1) verbal or written reprimand; (2) reprimand with loss of salary; (3) elimination from promotion list; (4) transfer for disciplinary reasons; (5) suspension for a maximum period of six months with loss of salary; (6) placement on the redundant list (*mise en disponibilité*); (7) discharge.

The time during which the civil servant is suspended or put on the inactive list is not counted for length of service.

ARTICLE 52

The penalties provided in (1) and (2) in the foregoing may be imposed by the head of the organization with which the civil servant is connected. Generally reprimand with loss of salary, if applied twice within a year, is inflicted for the third time by the disciplinary commission.

The other penalties can be enforced only in accordance with an opinion of the disciplinary commission. The penalties provided in (1), (2), and (3) are considered as canceled from the official record if the civil servant has not been subject to further penalties for a period of five years.

ARTICLE 53

Disciplinary trial is decided upon by the minister or by the head of the authority on the basis of investigation made by the supervisory official or by a delegate of the proper authority, on the occasion of which the accused will be heard.

The accused civil servant has a right to see the contents of his record.

He will defend himself personally, orally, or by written statement, or by the assistance of a colleague chosen by him from among civil servants of the same organization.

ARTICLE 54

The civil servant put on trial receives written notice at least fifteen full days before date of trial.

ARTICLE 55

The trial takes place behind closed doors.

The decisions of the commission will be written and will include reasons.

The decisions of this commission are final and executory.

ARTICLE 56

The civil servant put on the redundant list can be restored to duty only after two years and in the lowest grade of the position which he held; as for persons discharged from the service, they can never again hold public office

ARTICLE 57

When the interest of the service or of the inquiry require, the accused civil servant may be suspended before action taken by the disciplinary commission on condition that he be brought before the commission within a period of thirty days, the latter being required to adjudicate the case within two months at the most. This suspension does not involve by itself loss of salary nor loss of seniority rating.

ARTICLE 58

Suspension is obligatory when an official suit against a civil servant has been initiated on the basis of a warrant from a magistrate for crime or forgery, theft, deception, immorality (penal code, Articles 262, 263, 264, 267) violation of privilege, loss of public funds, illegal collection of taxes, breaking of seals, larceny, concealing or destroying documents belonging to the archives or public offices, instigation of strikes.

When a civil servant is acquitted, the case will be brought before the disciplinary commission which will decide whether the civil servant can be restored to the service, and when he has been finally found guilty the provisional suspension will be transformed into discharge.

Chapter VI. Disciplinary Commissions

ARTICLE 59

Disciplinary commissions in central departments comprise (*a*) a councilor of the court of appeal elected by joint session of the chambers of this court; (*b*) a higher civil servant, the senior in his grade, taken from the central offices;

(*c*) one of the directors at the head of the service drawn by lot within the appointment and promotion commission.

ARTICLE 60

Disciplinary commissions for departmental, communal, and other local civil servants comprise (*a*) the first president or president of the local court; (*b*) a service chief delegated by the departmental council; (*c*) a service chief delegated by the municipal council of the capital city of the department.

ARTICLE 61

Members of the commissions are appointed by royal decree for a period of three years.

For the same period of three years, a substitute member will be appointed for each member of the commission.

CHAPTER VII. MISCELLANEOUS AND TEMPORARY PROVISIONS

ARTICLE 62

Civil servants in service when this statute comes into force and who were in service in 1916 may be promoted up to the grade of director, inclusively, even if they do not possess the required education.

ARTICLE 63

For a period of five years after the promulgation of the present law, there may be appointed as probationers in case of necessity young persons at least eighteen years old, who, however, cannot receive permanent appointment before being twenty-one years of age and in the case of men before having satisfied the army requirements.

ARTICLE 64

Civil servants who when this law goes into effect have completed a probation of at least five consecutive years, as well as those who have been included in the permanent services by way of examination, are considered established civil servants.

As to all others who possess the entrance conditions and have fulfilled a probationary period of less than five years and more than one year, the appointment and promotion commission decides if their services are necessary and whether they may be declared established civil servants.

ARTICLE 65

Civil servants who have resigned may be reinstated in the positions which they held, or equivalent positions in the same department, with the favorable opinion of the appointment and promotion commission, within a period of five years after leaving the service.

ARTICLE 66

The public authorities, when reorganizing their organic laws in harmony with the present statute are required to fix the number and the positions which comprise each service, so that a "general direction" includes several "directions," a "direction" several services, in conformity with the needs of the service.

Positions which are decided to be useless will be eliminated, and the respective civil servants will be appointed to equivalent or inferior positions, retaining meanwhile the salary which they had at the time of elimination of their posts.

Civil servants who have been employed less than five years who are declared redundant receive a cash payment equal to two months' salary.

In the case in which the new organization brings about a modification of bureaus, the civil servant whose position is lowered will retain the salary which he possesses.

ARTICLE 67

In the future when new public services are created as required by the general interest of the state or departments and communes, the grades and classes of the different offices are fixed only after having taken the opinion of the higher legislative council.

ARTICLE 68

The regulations applying the present law will be completed within six months after promulgation of this statute.

ARTICLE 69

To insure that the organic laws and personnel lists retain the necessary harmony and unity, the prior opinion of the legislative council is required and they can be brought before parliament only accompanied by this opinion.

ARTICLE 70

All laws, regulations, and dispositions of every kind in force anywhere within Roumania contrary to the present statute are annulled.

ARTICLE 71

This law comes into force January 1, 1924. The preparatory measures can be taken immediately after its promulgation.

THE CIVIL SERVICE OF SWITZERLAND

ROGER CALAME
University of Basle

FEDERAL LAW ON CIVIL SERVANTS, JUNE 30, 1927

Chapter I. Definition and Appointment

ARTICLE 1

For the purposes of the present law any person is considered a civil servant appointed as such by the federal council, by a department subordinate to it, by the federal court, or by the federal insurance court.[1]

The federal council draws up a list of positions the holders of which have the status of civil servants. This list is submitted for approval to the federal assembly.

ARTICLE 2

Any person of Swiss nationality of good reputation is eligible to receive the status of civil servant. One who is suspended (*interdit*), or deprived of his civic rights, or has been declared incapable of holding a public position, may not possess the status of civil servant during the period of disability.

With the consent of the federal council, the status of civil servant may be conferred by way of exception upon a person not of Swiss nationality.

ARTICLE 3

Appointment is preceded by a public competition for the vacant position. If the result of the competition is insufficient, the authority responsible for making the appointment may order a new competition or proceed by nomination (*voie d'appel*).

The federal council indicates the positions which can be filled without competition. It may delegate this power to the departments subordinate to it.

ARTICLE 4

Appointments may be made subject to certain conditions, particularly as to age, aptitude, preliminary instruction, possession of a rank in the Swiss army; it may also depend upon the result of an examination or a period of probation.

The obligation to accept other federal offices may be bound up with appointment to a particular position.

The federal council fixes the special conditions required for appointment to the different positions. It may delegate this power to the departments which are subordinate to it. The federal court and the federal insurance court fix these conditions for the civil servants whom they appoint.

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[1] Translation by Leonard D. White.

ARTICLE 5

The federal council appoints civil servants subject to the reservations contained in paragraphs 2 and 3. It may delegate this power to the departments which are subordinate to it.

The federal court and the federal insurance court appoint their officials.

The power to appoint federal railway officials belongs to the authorities indicated in federal legislation governing railway organization.

CHAPTER II. GENERAL SITUATION OF CIVIL SERVANTS

ARTICLE 6

The term of office is three years. Special regulations of federal law may fix a longer period.

When an appointment takes place in the middle of a three-year period, it expires at the end of this period.

ARTICLE 7

No change is made in the federal laws or decrees regulating the holders of certain positions with reference to (*a*) taking an oath or affirmation; (*b*) incompatibility on account of relationship.

ARTICLE 8

Civil servants are required to live in the place indicated by the appointing authority for their service. They can transfer domicile to another place only with the authorization of the competent authority.

A civil servant is required to deposit his legitimation papers in his domicile. Domicile cannot be refused him.

ARTICLE 9

When required by reasons of service or efficient employment of personnel, the civil servant may be transferred during his term of office or may be made responsible for duties related to his professional knowledge or his skill, but not included within the scope of his regular appointment.

ARTICLE 10

The federal council fixes the hours of work per day for civil servants who are not subject to legislation concerning the work day in railroad and other transportation and communication enterprises. The federal court and the federal insurance court determine these conditions for their officials.

When the service requires, officials may be required to work in excess of the ordinary hours.

ARTICLE 11

The federal council fixes the rules concerning professional training of civil servants. It may delegate this power to the departments which are subordinate to it.

ARTICLE 12

The appointment of civil servants involving passage from one salary class into a higher class is considered a promotion.

Promotion is governed by the needs of the service. It may depend upon the outcome of an examination.

The federal council defines the rules for promotion. It may delegate this power to the departments which are subordinate to it.

ARTICLE 13

The right of association is guaranteed to civil servants within the limits fixed by the federal constitution.

Civil servants are forbidden, however, to join an association which permits or employs the strike in the civil service, or which pursues ends or employs means which are illegitimate or dangerous for the state. The application of this rule is vested exclusively in the federal council.

ARTICLE 14

Civil servants cannot assume a public responsibility until authorized by a competent authority.

Authorization may be granted with conditions or reservations, refused, limited, or withdrawn when the execution of the public responsibility may interfere with the execution of the service duties of the civil servant or is irreconcilable with his official situation.

No public law penalty may be imposed upon a civil servant to whom authorization to accept a public obligation is refused.

The execution of public responsibilities may cause reduction of salary, lessening of the number of rest days or vacation, only to the extent that it involves a total absence from the service of more than fifteen days a year. The civil servant has no right of recovery for the rest days or holiday period which he devotes to the execution of a public responsibility.

The federal council indicates the competent authorities to grant authorization; it fixes procedure and defines the situation of the civil servant who benefits by an authorization. For officials of the federal court and of the federal insurance court, authorization is given by the court.

ARTICLE 15

There is incompatibility between the duties of federal office and secondary occupations followed by a civil servant as well as any occupation followed by a member of his family living in his household when such may prejudice the fulfilment of the official duties of the civil servant, or when they are irreconcilable with his official situation.

The following are incompatible with federal office: (*a*) appointment in any industry or commercial undertaking; (*b*) management of a restaurant or café and the professional retail sale of alcoholic beverages by a member of the family living in the household of the civil servant.

The federal council determines in which cases authorization is required for other related occupations. The civil servant requires special authorization (*a*) to carry on any subsidiary lucrative occupation; (*b*) to accept a position on the board of directors or management of a company organized for profit.

Mutual aid corporations or institutions whose purpose is to secure economic advantages to their own members are not considered companies organized for profit in the sense of the preceding paragraph.

ARTICLE 16

Inventions by civil servants in the performance of their duties or which are related to their official duties belong to the confederation (*a*) when an invention comes within the scope of work of the civil servant or his service obligations; (*b*) when the invention is the result of official experiment; (*c*) when it has value from the point of view of national defense; (*d*) when the appointing authority has reserved ownership of it.

If the invention has real economic or military importance, the civil servant is entitled to a special bonus which will be equitably determined.

When the bonus is fixed, account is taken when necessary of the co-operation of other persons employed by the confederation, and of the use which has been made of equipment belonging to the state.

If the civil servant is not entitled to a bonus the competent authority may grant him a sum of money fixed in its discretion.

ARTICLE 17

The civil servant is required to live in the quarters assigned to him by the appointing authority.

The civil servant is required to pay rent for the use of quarters. Advantages and inconveniences of these quarters will be taken into consideration in fixing the rent.

The federal council fixes the regulations concerning distribution of quarters and calculation of rent. It may delegate this power to the departments which are subordinate to it.

ARTICLE 18

Civil servants required to wear a uniform are furnished it without charge.

The federal council fixes the rules concerning the delivery and wearing of the uniform. It may delegate this power to the departments which are subordinate to it.

ARTICLE 19

The federal council fixes the rules concerning transportation on the lines belonging to the confederation or managed by it.

Limitation of transportation facilities gives no right to a bonus.

ARTICLE 20

The federal council fixes the rules governing classification of the bureaus. It may delegate this power to the departments which are subordinate to it.

CHAPTER III. DUTIES OF CIVIL SERVANTS

ARTICLE 21

Civil servants are held to an exclusively departmental service. They must give all their time to this department.

Civil servants are required to assist each other and to take each other's place in the service even if they are not specially required to do so.

ARTICLE 22

Civil servants are required to fulfil faithfully and conscientiously their service obligations, to do everything in harmony with the interests of the confederation, and to refrain from everything which might damage the confederation.

ARTICLE 23

Civil servants are forbidden to strike or to urge other civil servants to do so.

Associations and co-operative societies are forbidden to deprive a civil servant of his membership or to damage him in his economic interests for nonparticipation in a strike.

Agreements made by associations or co-operative societies as well as statutory or other arrangements contrary to these prohibitions are null and void.

ARTICLE 24

Civil servants are to show themselves worthy of the consideration and confidence which their official situation requires by their attitude in office and out of office. Civil servants have the duty to conduct themselves with tact and politeness toward their superiors and colleagues and their subordinates. They have the same duty in their official connections with the public.

ARTICLE 25

Civil servants are required to execute conscientiously and reasonably official orders of their superiors.

Superior officials are responsible for the orders which they give.

ARTICLE 26

Civil servants are forbidden to solicit, to accept, or to exact promises of gifts or other advantages for themselves or for others by reason of their official position.

Third persons are forbidden to solicit, accept, or exact promises of gifts or other advantages with the connivance of civil servants.

ARTICLE 27

Civil servants are forbidden to divulge official matters which are to be held in secret either by virtue of their nature or by reason of special instructions.

The duty of maintaining professional secrecy exists even after termination of the term of office.

ARTICLE 28

Civil servants may give evidence as parties, witnesses, or experts upon matters relating to their obligations only with the authorization of the competent office.

This authorization is necessary even after the termination of the term of service.

The federal council fixes the regulations according to which the competent office gives or refuses this authorization. Authorization can be refused only if the general interests of the country require or if it would seriously hinder the administration or the execution of his duties.

The federal council indicates the competent office and regulates the procedure.

CHAPTER IV. VIOLATION OF DUTIES; CONSEQUENCES

ARTICLE 29

Civil servants are responsible to the confederation to make good damage caused it by violation of official duties whether intentionally or by negligence or by lack of prudence.

If the confederation is responsible to third parties according to the special regulations of federal laws, it has an action against the civil servant. This right of action continues even after the conclusion of the term of office.

The regulations of the code of liability with respect to obligations resulting from illegal acts, moreover, are applicable to claims founded upon the two preceding paragraphs.

ARTICLE 30

Civil servants who violate their official obligations whether intentionally or by negligence or by lack of prudence are subject to a disciplinary penalty.

Disciplinary action has no effect upon responsibility for damage caused nor upon the penal responsibility of civil servants.

If in the course of a disciplinary action a penal case is brought against the civil servant by reason of the same facts, the disciplinary judgment is deferred until the close of the penal case, unless the interests of the administration are not damaged by retaining the civil servant in his office.

Whether a civil or criminal action brought against a civil servant ends in a verdict of guilty, acquittal, or dismissal of the case, the competent authority nevertheless retains the right to inflict disciplinary punishment on the basis of the same facts.

ARTICLE 31

The disciplinary punishments are (1) reprimand; (2) fine up to 100 francs; (3) withdrawal of transportation facilities; (4) temporary suspension with reduction or deprivation of salary; (5) disciplinary transfer or demotion with an equal or lower salary, in case of necessity with reduction or deprivation of lodging bonus; (6) reduction of salary within the limits of the sums fixed by the position; (7) reduction or elimination of ordinary salary increases; (8) suspension; (9) discharge.

No other disciplinary punishments may be imposed except those enumerated in the foregoing. Each penalty may also be accompanied by threat of discharge.

In exceptional cases, several disciplinary punishments may be imposed at once.

Suspension and discharge may be ordered only after a civil servant has been guilty of serious or continued violations of official duties.

The federal council prescribes rules governing the status of civil servants suspended according to the paragraph above.

ARTICLE 32

Disciplinary penalty may be imposed only after investigation.

The civil servant receives notice of the charges as well as the acts upon which a disciplinary measure would be based. He may offer explanations demand a further investigation, and defend himself.

In disciplinary matters, civil servants may receive assistance from a representative within the conditions fixed in Article 59, paragraph 2.

Disciplinary penalties inflicted longer than five years ago are not taken into consideration in determining any new disciplinary penalty to be applied.

Disciplinary penalties are notified in writing to the civil servant in question with a statement of reasons. Reprimand may be given orally.

ARTICLE 33

The federal council is the supreme disciplinary authority for civil servants. It may delegate its disciplinary power to the departments which are subordinate to it. The federal court and the federal insurance court possess the same power with respect to their officials.

Commissions responsible for dealing with disciplinary matters may be established.

The federal council fixes the competence and procedure; it regulates the organization of disciplinary commissions.

ARTICLE 34

The rules of the courts and of penal procedure for the federal army are reserved in so far as is concerned the disciplinary authority of civil servants under military jurisdiction: likewise are reserved the regulations for the federal frontier guard in so far as civil officers of this body are concerned.

ARTICLE 35

Criminal prosecution of civil servants having committed crimes or misdemeanors is regulated by special provisions of the federal law. The provisions of the military penal code, of the law on military judicial organization, and of the service regulation for Swiss troops are applicable to civil servants under military jurisdiction.

ARTICLE 36

The criminal provisions of federal law concerning crimes and misdemeanors against official duties are applicable when the act is committed in a foreign country.

The penal courts of cantons in which the offense was committed are competent to take jurisdiction of crimes and misdemeanors; the federal council may, however, transfer them to the federal court.

CHAPTER V. RIGHTS OF CIVIL SERVANTS

ARTICLE 37

Salaries of civil servants are fixed according to the following scale (here follow twenty-six salary scales ranging from a maximum of from 13,400 francs to 17,000 francs down to a minimum of from 2,700 francs to 3,900 francs).

By way of exception, in order to secure the services of persons specially qualified or to retain them in the service of the confederation, the appointing authority, with the consent of the federal council, may allow salaries 20 per cent higher than the maximum fixed in the foregoing scale.

In places in which the cost of living is below the average, the minimum and maximum levels fixed in the foregoing are reduced, the minimums by 100 francs and the maximums by 120 francs. A minimum salary of 2,700 francs is, however, guaranteed. The sum of 2,600 francs remains as the point of departure for the ordinary increases for the twenty-sixth class.

In places in which the cost of living exceeds the average, a residence bonus is allowed above the salary fixed in the first paragraph. This bonus amounts per annum to:

Zone	For Bachelors Francs	For Married Persons Francs
1	90	120
2	180	240
3	270	360
4	360	480

The classification of places into residence bonus zones rests upon the basis of the average cost of living.

In places having an altitude of more than 1,500 meters the bonus may be increased if the cost of living warrants.

Civil servants receive the residence bonus fixed for the place in which they are domiciled. Widows and divorced persons who have a household of their own have a right to the bonus provided for married persons.

The federal council fixes other rules with respect to the classification of places. This is done at the beginning of each administrative period.

ARTICLE 38

Each office is allocated by the federal council to one of twenty-six salary classes.

For the classification of positions, account will be taken especially of the education required, of the extent of powers, of duties, and of responsibility. Under similar conditions positions are allocated to the same salary class.

The annual salaries of civil servants designated below are fixed by the federal council in each case individually at the time of appointment: (*a*) up to 25,000 francs maximum for the directors-general of the federal railways and the director general of the department of posts and telegraphs; (*b*) up to 20,000 francs maximum for certain district railway directors and for division chiefs of the general administration of the confederation and of federal railways.

ARTICLE 39

The initial salary is fixed at the time of appointment.

The initial salary corresponds, as a rule, to the minimum of the class to which the civil servant belongs. It may exceed this minimum if justified by special circumstances such as good work performed in other positions, preparatory studies, special aptitude, or knowledge. It may be less when the person in question has not yet completed his twentieth year.

ARTICLE 40

Up to the attainment of the maximum, the civil servant is entitled to a regular increment at the beginning of each year.

The amount of the ordinary increment is equivalent to one-fifth of the difference between the minimum and the maximum of a salary class. It amounts to at least 100 francs for each year of completed service. The sum is calculated on the basis of the class to which the civil servant belongs at the end of the year.

If the civil servant has less than one year's service in a given grade when the first ordinary increment falls due, the amount of this increment is fixed in proportion to the length of service completed in the current year. Fractions of months are not counted.

In case of extended absence the ordinary increment may be reduced or omitted at the beginning of the following year. The federal council fixes the rules concerning reduction or omission of this increment.

ARTICLE 41

Civil servants entitled to promotion have a right to an exceptional increment. Its amount is fixed in the light of the increased responsibilities imposed upon the official and his capacity. It is at least equal to a regular increment as fixed for the new office.

The appointing authority determines the sum of the extraordinary increment taking account of future regular increments so that the maximum fixed for the new position may be reached at the end of the year in which the civil servant completes his twenty-fourth year of service as such and his fifth year in his new position.

When the lowest pay for the new office exceeds the former salary, this difference is included in the exceptional increment.

Exceptional increments in case of promotion are not included in the ordinary increments.

The federal council determines the circumstances in which exceptional increments may be granted independently of promotion.

ARTICLE 42

In so far as circumstances justify, a special living allowance may be granted independently of salary to civil servants of Swiss nationality required to live abroad. The federal council regulates the application of this rule.

ARTICLE 43

Civil servants are entitled to a bonus for each child under eighteen years of age not gainfully employed. The bonus amounts annually to 120 francs per child. The federal council decides who are children in the sense of the present article.

Only children who are maintained by the civil servant have a right to the bonus. The federal council fixes the circumstances in which the bonus for children may be paid in whole or in part when the civil servant does not wholly maintain the child.

ARTICLE 44

The federal council determines the conditions authorizing repayment of expenses and authorizing indemnities: (*a*) for official travel, and employment of civil servants away from official place of duty, including supplementary payments for traveling officials; (*b*) for movement of household goods upon occasion of taking office or changing residence; (*c*) for night service; (*d*) for simultaneous employment in different federal offices; (*e*) for extraordinary services including overtime, excepting the rules of federal legislation concerning hours of work in railroad and other transportation and communication enterprises; (*f*) for extended or repeated substitution in an office belonging to a higher class.

Schemes for giving prizes for piece work or job payment as well as special awards (*récompenses*) may be introduced for the purpose of interesting the staff in technical improvements or in the economical organization of the departments and establishments. The federal council regulates the details.

On condition of observing the rule of equal pay, the federal council may delegate to the departments which are subordinate to it the powers provided in paragraphs 1 and 2.

ARTICLE 45

The right to salary commences on the day on which the civil servant enters upon his duties. It comes to an end on the day on which he ceases service.

The right to a residence bonus and to bonus for children commences on the day on which the conditions mentioned by the present law and defined by the federal council are fulfilled. It ceases on the day when these conditions cease to exist.

Salary, residence bonus, and allowances are paid monthly.

The federal council issues regulations concerning (*a*) the right to salary, residence bonus, and allowances in case of absence caused by illness, accident, military service, vacation, or other reason; (*b*) calculation of seniority in the sense of the present law.

If a civil servant is transferred from the service on account of physical or mental infirmity, especially for loss of hearing or sight, sense of color, or capacity to walk, he has a right to a salary up to the end of the administrative period unless the infirmity was caused voluntarily or negligently or by serious lack of prudence. The salary will always be reduced by a sum equal to the benefits from the military insurance or from the national fund at Luzerne.

ARTICLE 47

The salary of a deceased civil servant is granted to the survivors in every case for one month after the death of the person in question, in addition to the benefits, if any, from the insurance funds of the confederation.

If the persons involved are in need, the salary may be granted for a period of one year as a maximum: (*a*) in case of the invalidity of the civil servant; (*b*) in case of death, to his survivors on condition that the civil servant has substantially contributed to their support, of which fact the persons involved are required to furnish proof.

The total of salary payments in the sense of the second paragraph and of the present value of the statutory payments from the insurance funds of the confederation will not exceed the annual salary paid currently to the civil servant in question.

The right to salary payment as well as to sums used for this purpose can neither be subject to lien or sequestration or bankruptcy proceedings. Every grant or attachment of salary is null and void.

Residence bonus, allowances for foreign residence, and bonus for children are included in the right to salary.

The federal court designates the offices authorized to grant salary payments and decides who are to possess the rights of survivors in the sense of paragraphs 1 and 2. The grant of salary payments in case of death or invalidity of the civil servants of the federal court or of the federal insurance court falls within the competence of these courts.

ARTICLE 48

With the exception of the provisions of paragraph 2 of the present article civil servants are insured against invalidity, old age, and death in one of the insurance funds of the confederation (the insurance fund of federal civil servants, employees, and laborers, insurance and aid fund of employees of the federal railways).

The obligations of the confederation both with regard to the insurer and the conditions of insurance are fixed by special federal legislation.

Payments to widows and orphans are not subject to any inheritance tax.

Payments due to the confederation on account of damage intentionally caused may be set off against the statutory benefits of the insurance fund of the confederation to the degree in which these benefits are not absolutely necessary for the support of the payee or his family. This set-off cannot in any case be levied against the statutory benefits due to the survivors of insured persons or of depositors. The regulations of the law of obligations are, moreover, applicable by analogy with respect to the conditions under which compensation may take place and the effects of this compensation.

The federal council lays down the rules concerning the benefits of the confederation in case of illness or accident of civil servants. It may establish special insurance funds in case of sickness or require the civil servant to insure himself in a fund recognized by the confederation. The regulations of federal legislation concerning sickness and accident insurance and military insurance are not affected by the foregoing.

The federal council may delegate to the departments which are subject to it the powers contained in paragraph 5.

ARTICLE 49

The appointing authority may grant a bonus of one month's salary to civil servants having been twenty-five years in the service of the confederation.

A bonus of the same amount may be granted after forty years of service.

ARTICLE 50

Civil servants have a right to an annual vacation.

For civil servants who are not subject to federal legislation concerning duration of work in railroad and other transportation and communication enterprises, the federal council fixes (*a*) the length of vacation; (*b*) the degree to which absences on account of sickness, accident, military service, leave, or other reasons are subtracted from the vacations; (*c*) the conditions under which leave can be granted.

The federal court and the federal insurance court have the same power with respect to their officials.

ARTICLE 51

Civil servants may demand from the competent service a certificate indicating exclusively the nature and duration of their engagement.

On the express demand of civil servants, the certificate will also indicate the quality of service and conduct of the person concerned.

ARTICLE 52

When service reasons seem to require it, the competent authority may order as a preventive measure the immediate suspension of a civil servant.

This order may be accompanied by reduction or suspension of pay, residence bonus, and allowances, but not the suspension of insurance.

If the suspension is unwarranted, the civil servant is restored to his rights, if necessary with repayment of salary, housing bonus, and allowances of which he has been deprived.

ARTICLE 53

If the civil servant asks to be released (*licencié*) before the expiration of his term of appointment, the appointing authority will grant his request within three months on condition that no important interest of the confederation is damaged.

In case of war, danger of war, or prospective mobilization for active military service, the federal council may turn over the cancellation of the service relationship of civil servants employed by designated departments to the formal authorization of the competent offices. This regulation is applicable in particular to civil servants in the military administration, including military establishments and shops, and to civil servants in public corporations dealing with communication.

The regulations of the federal law on military organization, particularly Articles 202 and 217–20, as well as the regulations relating to them, are not affected by the foregoing.

ARTICLE 54

The civil servant whose position is eliminated in the course of his term of employment, and for whom no other position corresponding to his ability or skill is available, has a right to a payment unless the suppression of the position was expressly reserved at the time of the appointment.

At the time of fixing the payment, account will be taken of benefits, if any, from the insurance fund of the confederation.

ARTICLE 55

Before the expiration of the term of office and independently of suspension or discharge (Article 31, paragraph 1), the appointing authority may modify or cancel the service connection for just cause with a written notice of three months, or may cancel them immediately.

Just cause includes proved incapacity, feebleness, *saisie infructueuse*, loss of eligibility as provided in Article 2, incompatibilities as provided in Article 7; finally, all other circumstances which, according to rules of good faith, permit the appointing authority no longer to continue the service relationship. Marriage of a civil servant of the feminine sex may also be considered as just cause.

Cancellation or modification of the service relationship for just cause can be decided only after an investigation and hearing of the civil servant. The decision of the appointing authority is notified in writing to the person concerned with a statement of reasons.

The right of the civil servant to demand damages on account of unjustified modification or cancellation of the service relationship remains intact. At the time of fixing the payment account will be taken of the benefits, if any, from the insurance fund of the confederation.

No payment can be claimed if the modification or cancellation of the service relationship has been initiated by the official in question, on account of invalidity.

ARTICLE 56

Civil servants forfeiting their rights to benefits from one of the insurance funds of the confederation because they have not been reappointed, or because they have been released on account of their own fault, may in worthy cases be given the benefit of aid either on one occasion or periodically. Survivors of a civil servant may also in the same circumstances be given aid. Civil servants having canceled their service relationships on the invitation of the competent authority are considered as having been released.

The grants provided in the foregoing paragraph will not exceed in any case three-fourths of the benefits to which the civil servant or his survivors would have been entitled in case of failure to reappoint or discharge not caused by the fault of the civil servant. Recurrent grants are revocable at any time.

Sums paid as grants cannot be attached nor sequestered nor be made subject to bankruptcy proceedings. Every grant or lien of these funds is null.

The federal council provides these grants. It judges freely of the circumstances bringing about failure to reappoint or discharge, as well as the situation of the person concerned or his survivors.

The grants are taken from the insurance fund to which the civil servant subscribed.

The federal council may delegate to the departments which are subject to it the power conferred in paragraph 4.

The federal council decides upon the retroactive application of this article.

ARTICLE 57

The service relationship is concluded at the expiration of the administrative period (three years). The appointing authority decides with full discretion as to reappointment.

A decision not to reappoint a civil servant is reported to the person concerned at the latest three months before the expiration of the administrative period with a statement of reasons.

A civil servant who does not wish to renew his service relationship at the expiration of his term of office is required to inform the appointing authority in writing at least three months before the expiration of the period. The regulations of Article 53, paragraphs 2 and 3, are applicable by analogy.

ARTICLE 58

The federal council, with the exception of the second paragraph herein, is the administrative court of last resort in the matter of decisions bearing upon non-financial rights arising out of service relationships.

The federal court, the federal insurance court, and the governing body of the federal railways are the administrative courts of last resort in the matter of decisions bearing upon non-financial rights of their subordinates. The decisions of the governing body of the federal railroads relating to public expenditures, in conformity with Article 14, paragraph 2, may always be taken to the federal council on appeal.

ARTICLE 59

The petitions and suits of civil servants with respect to service relationships which are within the competence of administrative agencies are to be settled by a simple and rapid procedure, giving every guaranty of objectivity and impartiality.

Petitions and suits are to be presented by the civil servant himself. He can act through a representative (*a*) when for plausible reasons he cannot maintain his case himself; (*b*) in suits.

The federal council fixes the order of courts and the procedure.

ARTICLE 60

The federal court has exclusive jurisdiction of financial claims arising from service relationships, including suits with respect to benefits from an insurance fund of the confederation to claimants, whether these claims are instituted by the confederation or whether they are directed against it. The federal court, when acting upon suits relative to benefits from an insurance fund in case of cancellation of the service relationship or of failure to reappoint, decides without appeal whether the action taken against the insured person or against the plaintiff may be considered as having been caused by his fault, and, if necessary, whether or not there exists a permanent invalidity.

ARTICLE 61

. . . .

Until the federal law on administrative and disciplinary jurisdiction comes into force and effect, the regulations of Articles 183–88, 194, 195, and 221 of the federal law on federal judicial organization concerning public law cases are applicable by analogy.

ARTICLE 62

With the exception of work legislation in factories and legislation with regard to hours of work on railroads and other transportation and communication enterprises, the federal council lays down rules governing the service relations of persons hired by the confederation who do not have the status of civil servants. Articles 13, 23, and 53, paragraphs 2 and 3, and Article 60, in so far as they relate to claims arising from benefits from one of the insurance funds of the confederation, are applicable by analogy in all cases.

The service relationships of persons holding federal positions appointed by the federal assembly are governed by the special regulations contained in federal legislation.

The federal council may delegate to the departments which are subordinate to it the power granted in the first paragraph herein.

ARTICLE 63

The confederation establishes the federal personnel office in the finance department.

The federal council may correlate or combine this office with one found in the existing departments. It regulates its organization and powers, as well as its relations with other offices of the confederation.

ARTICLE 64

The federal personnel office has particularly the following powers:

a) It prepares decrees, ordinances, and regulations which the federal council promulgates in execution of the present law.

b) It prepares the decisions looking toward more scientific employment of the personnel appointed by the confederation, or gives its opinion upon projects of this kind.

c) It studies questions of principle concerning the personnel and insurance of personnel or gives its opinion on this subject.

d) It gives its opinion on propositions concerning personnel questions of an individual nature: appointment and promotion, fixing of salaries and wages, housing bonus, allowances, special payments and prizes, payment of wages or salary to survivors, secondary occupations, payment of damages, disciplinary measures.

e) It gives its opinion upon petitions and suits concerning the service relationships of persons hired by the confederation.

f) It co-operates in the creation of personnel commissions.

g) It prepares personnel statistics.

The federal council may turn over some of these powers to other offices.

ARTICLE 65

A joint arbitration commission is established as an advisory agency of the federal finance department for questions relating to the regulation of service questions in general.

The commission is composed of the president, twenty members, and twenty substitutes.

The federal council appoints the president, ten members, and ten substitutes; the other members and substitutes are appointed by the personnel. The term of office is three years.

The commission is established, taking account of the branches of the administration. Members and substitutes appointed by the personnel are elected by proportional representation. The federal council establishes the electoral districts and regulates electoral procedure.

ARTICLE 66

At the invitation of the finance department the joint arbitration commission gives its opinion (*a*) on projects for executory regulations proposed by the federal council in the application of the present law; (*b*) on propositions having the effect of modifying or completing the present law or executory regulations promulgated by the federal council; (*c*) on questions of principle concerning the personnel and salaries in general.

The federal council emits other regulations relative to the operation of the commission. It regulates its connections with the finance department.

ARTICLE 67

In order to expedite collaboration between the directing agencies of the departments and the personnel and in order to interest the personnel in the better organization of the service, there may be established personnel commissions in the various departments, undertakings, or establishments.

The scope of the personnel commissions is exclusively advisory. They give their opinion at the request of the directing authorities of the service to which they are attached.

The personnel commissions give opinions (*a*) on suggestions and propositions related to the simplification and improvement of the service; (*b*) on suggestions relating to institutions for the good of the personnel in the matter of instruction and examinations; (*c*) on questions of general interest concerning the personnel of the service to which they are attached.

Members of the commissions and their substitutes selected by the personnel are elected according to proportional representation. The federal council lays down the detailed rules concerning the establishment of these commissions. It may delegate this power to the offices which are subordinate to it.

ARTICLE 68

The federal council takes the necessary measures concerning the installation and operation of the government medical service. It may delegate this power to the offices which are subordinate to it.

ARTICLE 69

The current three-year administrative period expires December 31, 1929. The new three-year administrative period commences January 1, 1930.

ARTICLE 70

Salaries, lodging allowances, and allowances of civil servants on active service are fixed anew when the present act comes into force and effect.

ARTICLE 71

The new salary includes the old salary increased by the principal allowance, always with the restriction that the total sum thus reached does not exceed the new maximum. The civil servant is entitled in any case to the minimum of the new class.

By former salary is understood: (*a*) the sum of the payments made to the holder of former positions; (*b*) the proportional part of the periodic increment calculated from the date of application of the law, always with the restriction that this does not increase the salary beyond the new maximum; (*c*) the supplementary allowance established for the transportation personnel; (*d*) the supplementary allowances for the payment of the higher employees of the postal and telegraph service and *facteurs de mandats;* (*e*) the equivalent to the right of free lodging allowed for frontier guards.

If the total of the former salary and of the principal allowance exceeds the new maximum, the surplus is allowed to the civil servant. It is paid to him on the conditions fixed in paragraph 4.

Until brought to an end the surplus will be met by (*a*) ordinary increments (Article 40); (*b*) special increments (Article 41) up to a point where they do not increase the salary beyond the new maximum; (*c*) increase of lodging bonus due to a new classification of place or to marriage (Article 37); (*d*) increase of foreign lodging allowance arising from a revision of this allowance (Article 42); (*e*) new allowances for children (Article 43).

ARTICLE 72

The civil servant who, when the present law comes in force, has completed thirty years of service and who holds his present position for at least five years is entitled to the maximum salary of the class to which his position belongs. If, in comparison with Article 71, there results from this a benefit to the civil servant, the salary will be fixed, taking account of future ordinary increments in such a way that the civil servant reaches the maximum of his class at the expiration of the year in which he will have completed his thirtieth year of service and held his office for five years.

Seniority in service in the sense of paragraphs 1 and 2 is calculated by taking account of all the time passed in the service of the federal administration or of a railroad acquired by the confederation, whether as civil servant or in some other capacity. Service completed before the twentieth complete year, however, is not taken into account.

In order to fix seniority of service in the sense of paragraphs 1 and 2, the federal council determines the degree to which can be reckoned the time during which the civil servant was not permanently or exclusively employed by the confederation. It determines also under what conditions and to what degree account can be taken of work performed before entrance into the federal administration.

ARTICLE 73

If the amount of the former lodging bonus exceeds that of the new, the surplus is retained by the civil servant. It is paid to him as a surplus. This surplus will be met by the salary increase provided in Article 71, paragraph 2 (*b*), and Article 72. The regulations of Article 71, paragraph 4, concerning the surplus are applicable by analogy.

Children's allowances fixed before the present law comes into effect at 150 francs are reduced to 140 francs when the present law comes into effect; to 130 francs after the first of January of the following year; and to 120 francs one year later. No civil servant, however, will suffer a reduction exceeding 30 francs a year after the present law comes into force and effect, and 30 francs a year further after the first of January of each following year.

ARTICLE 74

A payment amounting to a half-month's salary may be made to civil servants having more than twenty-five years' service when the present law comes into force and effect, upon condition that they have not already received a payment for twenty-five years' service.

This payment will be made within five years following the date of application of this law, but in any case will be made when the term of office comes to an end.

The federal council regulates the application of these rules.

ARTICLE 75

The federal council and the federal assembly draw up the list of positions provided in Article 1, paragraph 2, without being bound by the provisions of federal laws and decrees on the organization of departments, offices, and divisions concerning the distribution of positions or their titles.

In the classification of positions, account will be taken of the elimination of former specific supplementary allowances.

ARTICLE 76

The federal council issues the regulations applicable to fixing salaries or wages, lodging bonuses, and allowances to persons employed by the confederation who have not the status of civil servants when the present law comes into force and effect.

In so far as the desired conditions are fulfilled, Articles 71 and 73 are applicable by analogy up to December 31, 1930.

The following have no right to the application of the provisions of paragraph 2 of this article: (*a*) persons who were not bound to give full time; (*b*) persons who were not retained permanently or on full-time basis by the confederation; (*c*) auxiliary laborers paid in conformity with local rates.

ARTICLE 77

The annual insurable salary is composed of the new salary and of the surplus in conformity with Article 71, or of the new salary in conformity with Article 72, or in conformity with the new wage scale as provided by Article 76.

The insured persons and depositors whose insurable salary is reduced by virtue of the first paragraph, cannot retain insurance on the basis of the old salary. The income of widows and orphans is payable immediately following upon the death of the insured even if the claimants are entitled to a continuation of salary in conformity with Article 47, paragraph 1.

ARTICLE 79

When the competent authority cancels the service relationships of a person of the feminine sex by reason of marriage, this person is entitled to the restitution of her payments in the insurance fund with the interest calculated at the rate of the said fund.

ARTICLE 80

Article 80 lists all laws repealed.

ARTICLE 81

The present law comes in force and effect January 1, 1928. The federal council is responsible for its execution.

THE GERMAN AND THE PRUSSIAN CIVIL SERVICE

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INTRODUCTION

The civil service represents the most traditional aspect of German political life. In fact, an appreciation of its nature and its growth is as essential to an understanding of German political life as is an appreciation of the nature of Parliament to an understanding of English political life. And yet the establishment of a national civil service in Germany is quite recent, since its earlier growth is associated with the building-up of the several territorial states: Austria, Bavaria, Prussia, and others. Of these we have selected Prussia on account of her predominant rôle in modern Germany, and the powerful influence which the traditions of her civil service have exercised upon the development of the national administration.

It would be a fascinating though lengthy story to tell of the development of the Prussian civil service, how it arose or rather was raised from the barren soil of the "Holy Roman Empire's biggest sandbox," as the Electorate of Brandenburg was jokingly referred to in the sixteenth century; raised by a succession of iron-willed rulers who excelled in administration more than in anything else. If one wishes to understand the powerful tradition of personal duty and service which lends the bureaucratic system in Brandenburg-Prussia vigor and vitality as well as its ethical grandeur, it is important to appreciate this personal element in the molding of the centralized administrative system. The documents which we subsequently present are only the codified crystallization of a personal service relationship whose roots must be sought in the court chambers of the Elector Joachim, the Great Elector, and King Frederick William I.

However, it is necessary to guard against one error which it is easy to make. The period after 1871 is often spoken of as the Prussianization of Germany, meaning thereby a rigid centralization. Yet the implications of this phrase are erroneous in two respects primarily. First, it must be kept in mind that the other territorial states entering the German federal state in 1871, for example, Bavaria, had highly developed bureaucracies of their own, and, second, several of these territorial administrative systems were more highly centralized than the Prussian service itself. Nevertheless, the relation between the national and the Prussian administration has been and remains of tantamount importance. Grave complications have arisen in recent years because the problem of how to keep these several administrative services in gear was not sufficiently appreciated by the makers of the Republic. Although the constitution of Weimar made it possible to develop administrative services which were completely national from top to bottom, like the financial administration,[1] the prevailing tradition of leaving the administrative enforcement of national concerns to the several state administrations has shown the great need for some working arrangement which would at least integrate the administrative services of the Prussian and the national government. Otherwise the inevitable friction tends to become intolerable when different party groups control the two cabinets which are supposed to give direction to the national and Prussian administration, respectively. Thus the Prussian minister of finance, Herr Höpker-Aschoff, has estimated that three-fifths of the time of the several departments is spent in negotiations regarding their respective spheres of competency. No wonder there exists a widespread movement for administrative reform.

It seemed desirable to recall these conditions in broad outline; for it is upon this background that the picture of the German civil service must be painted. If the problem is visualized from this angle, it will become clear why any important changes in the field of civil service legislation such as are projected in the constitution cannot be expected to be realized until the questions of organization are ready for decision. And yet the question of reform within the civil service is a very real one. There has been considerable criticism of the rigid legal formalism of the preparation for the higher civil service; yet alternative schemes for a more adequate preparation show little agreement. This as any other question immediately brings to the foreground of attention how complexly the existing bureaucratic structure is related to the existing social order as a whole. It is, in other words, not a problem of creating anything *de novo* but rather of finding nice adjustments with reference to specific difficulties which have arisen in connection with the establishment of the parliamentary republic. That these questions are manifold no one will deny who appreciates the impact of political pressure as exercised by interested groups through parties and parliament. In the German Republic officialdom occupies a strategic position of peculiar advantage because civil servants are not only allowed to occupy a seat in the legislature but continue to draw their salaries and other emoluments of office, an advantage which makes them highly desirable delegates to the various legislatures from the point of view of a party exchequer, particularly when their expert knowledge renders them ideal for the representation of the party on one of the permanent committees. Small wonder then that we find more than one-fourth of the seats in the National Assembly occupied by civil servants. And still it is hard to see how a parliament could be organized in Germany without allowing civil servants to sit in it.

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[1] The best analysis of these recent developments is to be found in Gerhard Lassar, "Reichseigene Verwaltung unter der Weimarer Verfassung. Zwei Studien," in *Jahrbuch des Öffentlichen Rechts*, Vol. XIV (1926); and the same author's contribution to *Recht und Staat im neuen Deutschland* ed. Harms (1929).

It is not surprising that a system so deeply rooted in the past and of such slow and persistent growth should have reached a point of fairly subtle rationalization of its internal adjustments. In order to characterize to some extent the nicety of some of these distinctions, extracts from a number of court decisions have been included in this selection. They are not to be understood, of course, as adequate descriptive material of the many different aspects of the civil service relationship.

Beyond this more or less orthodox material, it has seemed desirable to include several documents illustrating the ways in which the German civil service attempts to meet the new problems which the establishment of a parliamentary republic has brought into existence, namely, democratization of the service itself and organization of the civil servants for the purpose of exercising political pressure. That this pressure will have considerable material to work on for some time to come an examination of the Salary Act will show.

We have so far used the terms "civil servant" and "civil service" as if they were perfectly unequivocal. As a matter of fact the concept of the civil servant (*Beamter*) is no more certain in German than in other law. Like all legal concepts dealing with a social phenomenon whose existence reaches beyond the legal sphere, the concept of the civil servant contains a considerable element of arbitrariness, but its major characteristics will become fairly well established in the mind of the reader through the first three documents published in this collection.

There is another concept which has very general significance for a real understanding of the following documents, namely, that of *Behörde,* which has ordinarily been rendered by "authority." However, authority does not entirely correspond to the German concept inasmuch as it stands for both more and less. The term *Behörde* definitely suggests an institution or an office with an established and well-defined political authority. Yet it has none of the general meaning which the term "authority" implies. When one thinks of these aspects of the term *Behörde,* one is inclined to use the term "office" as its equivalent, and this has occasionally been done.

The question of appropriate translations is a difficult one all around, and scholastic amity would suggest that one use the terminology established by learned and experienced predecessors; but when sages disagree fools must wax wise, and so the writer was often forced to make his own choice after all. It would, however, be highly desirable if an international agency of authority and competence could introduce some standardization into this maze of contradictory and confusing verbiage.

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Similarly, several of the national ministries have an *Amtsblatt.* Prussia has her own publications for several ministries like the *Ministerialblatt für die preussische innere Verwaltung,* which corresponds roughly to the *Reichsministerialblatt.* Another important publication is the *Preussisches Verwaltungsblatt.*

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DOCUMENT NO. 1

CONSTITUTIONAL PROVISIONS

The first document contains a number of articles of the constitution of the German commonwealth. The provisions which they contain must not be taken, however, to be novel or revolutionary throughout. As a matter of fact, they partly re-enact provisions of the constitution of the empire (Articles 39 and 46), partly provisions of the National Civil Service Act (cf. Document No. 2), partly provisions of state constitutions and statutes (cf. Document No. 3). Novel are primarily those provisions which define the jurisdiction of national legislation with reference to civil servants, broadened in accordance with the general trend of the constitution of 1919. Novel are also the extent of public liability for the wrongdoings of its civil servant and the suggested special representation for civil servants.

While care should be exercised not to overestimate the protection which the German constitution affords to any legal institution, it is of some general significance that certain established principles of civil service legislation have become an integral part of the constitution. And since a trend has appeared for the development of some manner of judicial review,[1] a variety of other provisions in the bill of rights of the constitution should be taken into consideration also.

ARTICLE 10

The Commonwealth may prescribe by law fundamental principles concerning: . . . . 3. civil service legislation for all public bodies.

ARTICLE 16

The civil servants directly charged with the administration of national affairs in any state shall, as a rule, be citizens of that state. Civil servants, salaried employees, and workmen of the national administration shall, if they so desire, be employed in the districts where they reside, as far as it is possible and not inconsistent with their training and with the requirements of the service.

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[1] Cf. C. J. Friedrich, "The Issue of Judicial Review in Germany," *Political Science Quarterly*, XLIII, 188 ff.

ARTICLE 39

Civil servants and members of the armed forces need no leave to perform their duties as members of the national assembly or of a state assembly. If they become candidates for election to these bodies, leave shall be granted them for the amount of time which is necessary to prepare for their election.

ARTICLE 128

All citizens without distinction are eligible for public office in accordance with the laws and according to their ability and services.

All discriminations against women in the civil service are abolished.

The principles of the status of civil servants shall be regulated by national law.

ARTICLE 129

Civil servants are appointed for life in so far as is not otherwise provided by law. Pensions and provisions for surviving dependents will be regulated by statute. The duly acquired rights of the civil servants are inviolable. Claims of civil servants based upon property rights may be established by process of law. Civil servants may be suspended, temporarily or permanently retired, or transferred to other positions at a smaller salary only under the legally prescribed condition or forms.

A process of appeal against any disciplinary sentence must be established and an opportunity given for reconsideration. Unfavorable facts regarding the person of a civil servant shall be entered into his official record only after opportunity has been given to such civil servant to express himself regarding such facts. Civil servants shall be permitted to inspect their official records.

ARTICLE 130

The civil servants are servants of the whole community, not of a party.

Freedom of political opinion and of association are assured to all civil servants.

The civil servants will receive special representation in accordance with more detailed provisions of a national law.

ARTICLE 131

If a civil servant in the exercise of the authority intrusted to him violates his official duty toward any third person, the liability is assumed by the state or public corporation in whose service the civil servant is. The right of redress (by the state or public corporation) against the civil servant is reserved. The ordinary process of law may not be excluded.

More detailed regulations will be made by the authorities competent for such legislation.

ARTICLE 176

All civil servants . . . . shall be sworn upon this constitution. The details will be regulated by order of the president.

DOCUMENT NO. 2

GENERAL PROVISIONS OF GERMAN NATIONAL LAW

The National Civil Service Act (*Reichsbeamtengesetz*) was modeled after the existing though uncodified Prussian civil service legislation as it had grown up in the preceding decades, gradually reshaping and developing the principles first systematically stated in the Prussian general code (cf. Document No. 3). It is therefore possible to regard the Civil Service Act as characterizing both services in spite of a great number of minor variations between them, which can readily be ascertained by the interested student with the help of the commentaries indicated in the bibliography. It is the main purpose of these extracts here to convey a general impression of the more general aspects of the legal status of German (and Prussian) civil servants.

This Civil Service Act was first enacted in 1873, but has been subjected to many amendments and improvements, which were brought together again by republishing the act in its amended form in 1907. This republication of course could not stop the process of constant amendment, a process which often touched only minor detail, but sometimes, as in the case of the Personnel Reorganization Ordinance (*Personalabbauverordnung*) of 1923, altered basic principles. These amendments have, of course, been taken as far as possible into consideration in making the present translation, but not beyond January 1, 1928. The original version of 1873 is to be found in the national law gazette (*Reichsgesetzblatt*) of that year (I, 245 ff.). The present translation is based upon the text found in Alfred Arndt's commentary called *Das Reichsbeamtengesetz* (1923). A new and more elaborate civil service act is in the offing as promised in the constitution. A draft of it was prepared by the Federation of Civil Servants in 1923 and has been the subject of parliamentary discussions since that time.

Besides this code, specially dealing with civil servants, there are provisions of a general nature in the civil and penal code. It seemed desirable, therefore, to give the more important provisions found there. They are broadly supplementary to the Civil Service Act itself. It must be kept in mind, however, that they apply to all German civil servants, while the provisions of the National Civil Service Act apply only to national civil servants. The present translations of these extracts are based upon the texts published by C. H. Beck in 1922 and 1921, respectively.

A. The National Civil Service Act

§1

National civil servant in the meaning of this statute is anyone who is appointed by the president or who is, according to the constitution, in duty bound to render obedience to the orders of the president.[1]

§2

Unless the appointment of a civil servant is made with the express understanding that he may be recalled or dismissed, he is supposed to be appointed for life.

§3

Every civil servant is to be sworn upon the national constitution and upon the conscientious fulfilment of all obligations of the service with which he is intrusted.

The oath shall be administered when the appointment is made or when the service is entered upon or at the latest immediately upon his entry into the service. If it is refused, the appointment of the civil servant and the legal relationship to the commonwealth which such appointment would create are void.

The minister of the interior may issue special regulations for the substitution of some other solemn declaration in cases in which the taking of an oath is prohibited to the members of a religious group (*Gemeinschaft*).

§4

Every civil servant shall receive a diploma of his appointment.

The title of the civil servant to receive the salary connected with his office begins with the day of his entry into the service unless special arrangements have been made.

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[1] Although the term *Reichsbeamter* (national civil servant) occurs time and again in this statute, we shall refer to it simply by civil servant. There are separate state statutes for the police. Cf. *Preussische Gesetzsammlung* (1927), pp. 151 ff.

§6

A civil servant may cede, pledge, or otherwise transfer his title to the payment of his salary, temporary retirement allowance (*Wartegelder*), or pension only to the extent to which they are subject to seizure.

§10

The civil servant is obliged to uphold the constitutional republican form of government in his official activities.

He has to abstain from all activities which cannot be reconciled with his position as a servant of the Republic. Particularly he is forbidden:

1. To abuse his office or the institutions to which he has access on account of his official position, for the purpose of furthering activities directed toward changing the constitutional republican form of government.
2. To give utterance to disrespect for the constitutional republican form of government, the national flag, or the constitutional government of the commonwealth or one of the states, by misusing his official position or while he is engaged in his official duties.
3. To influence his subordinates, whether civil servants, salaried employees or workers, guardians or pupils, with the intention of disparaging the republican form of government or the constitutional government of the commonwealth or one of the states, by misusing his official position or while he is engaged in his official duties.
4. To tolerate the participation of his subordinates in such activities as described under 1–3. . . . .

   A national civil servant is furthermore forbidden insidiously or provocatively to further in public any movements which are directed toward re-establishing the monarchy or toward destroying the Republic, nor shall he give aid to such movements by calumniating, insulting, or by rendering contemptible the Republic or any members of the government of the commonwealth or any state while they are in office.

§11

The civil servant must observe secrecy about all matters which have come to his knowledge by virtue of his office and which should remain secret either because of their very nature or because such secrecy has been prescribed by his superior. This obligation to secrecy remains even after the service relationship has come to an end.

§12

Before a civil servant testifies as an expert outside a court he has to secure the permission of his superiors. . . . .

§16

No civil servant may undertake an outside office or occupation which carries with it a regular remuneration nor may he engage in business (*Gewerbe*) without the previous consent of the highest national authorities [namely, the ministers]. The same consent is required if a civil servant is to enter the presidium, administrative board, or board of directors of any association, partnership, or corporation which is organized for commercial purposes. Consent to such entry shall not be granted if the position yields a remuneration either directly or indirectly.

The consent, if granted, may be withdrawn at any time.

§23

Every civil servant has to consent to being transferred to another office of equal rank and regular salary . . . . if the requirements of the service necessitate it. . . . .

§24

Every civil servant may be dismissed temporarily if the office intrusted to him ceases to exist on account of a reorganization of the national authorities. He has to be granted the temporary retirement allowance.

§25

Besides the case stated in §24, the following civil servants may be dismissed temporarily by order of the president and granted the temporary retirement allowance: the national chancellor, the national ministers, the secretaries and undersecretaries of state, the directors, and the chiefs of sections: (1) in the highest national authorities directly subordinate to the national chancellor; (2) in the national chancellory; (3) in the ministries; furthermore, the councilors and regularly appointed assistants in the national chancellory and in the foreign office, ... the heads of diplomatic missions and of the consulates as well as the secretaries of legations. [In connection with this paragraph, Article IV of the Act Concerning the Duties of Civil Servants for the Protection of the Republic of July 21, 1922 (*RGBl*, p. 590), must be taken into consideration. It provides: "The respective highest national authorities (i.e., president, chancellor, ministers, etc.) may at any time in the interest of strengthening the constitutional republican form of government retire temporarily the following officers granting them the temporary retirement allowance: (1) the directors of national offices and their substitutes, who belong to the salary classification group one or a higher group; (2) ministerial councilors in a directing position (*Dirigentenstellungen*); (3) civil servants who belong to the salary classification group two and higher if they are entrusted with tasks for the protection of the Republic." Then follows a list of these positions which is subject to change by the national government with the co-operation of a committee of the Parliament.—EDITOR.]

§26

The temporary retirement allowance shall amount to 80 per cent of that amount which is used as the basis for calculating the pension. . . . .

§29

The title to the temporary retirement allowance ceases:

1. If the civil servant is reappointed in the national service with a salary at least equal to that which he received before his temporary retirement.
2. If the civil servant loses German citizenship.
3. If the civil servant takes up residence outside the German states without permission of the chancellor.
4. If the civil servant is permanently retired.

§32

A civil servant who has been employed for a test period, until further notice, or otherwise subject to dismissal, is retired by the office which has ordered his employment.

§33

For the reappointment of civil servants who have left the national service either voluntarily or involuntarily the consent of one of the highest national authorities is required.

§34

Every civil servant who receives his salary from the national exchequer (*Reichskasse*) shall receive from the latter a lifelong pension if after at least ten years of service he is retired because of his inability to fulfil his official duties on account of a bodily defect or the weakness of his physical or mental forces. [The pension constitutes a part of the salary, and the title to it is part of the title to the salary. The title to a pension which has been granted cannot be lost by a criminal or disciplinary judgment against the receiver of the pension.—EDITOR.]

§35

The chancellor and the ministers may request, and be given, their retirement at any time. Even without disability they shall receive a pension if they have occupied their office at least two years or if they have been in the service for ten years.

§36

If the disability is the result of illness, wounding, or other injury, which the civil servant has incurred without his fault in the fulfilment of his service or on account of it, he shall be entitled to a pension even though he has been in service for less than ten years.

§41

After ten years of service the pension amounts to 35 per cent of the salary; it rises with every year of service by 2 per cent up to the twenty-fifth year of service; after that it rises by 1 per cent (for each year of service) of the salary as determined in §§42–44.

There shall be no pension above 80 per cent of the salary.

[In summarizing §§42–44, which contain detailed provisions for the calculation of the salaries upon which the pension is to be based, it can be said that such special items as constitute part of the budgetary provisions for salaries are included.—EDITOR.]

§45

The period of service is reckoned from the day of the first entry into the national service under oath.

§53

In order to prove disability for service of a civil servant who is applying for retirement there is required a declaration of his immediate superior stating that he considers the civil servant unable to fulfil his official duties any longer.

To what extent additional evidence may be required, or may be considered sufficient in spite of the declaration of his immediate superior to the contrary, is within the discretion of the authority which renders the decision regarding his retirement.

§57

The right to receive a pension is suspended: (1) if a pensioner loses his German citizenship, until he reacquires it; (2) if, and as long as, a pensioner receives a salary in the national or state service: but this only to the extent to which his new salary, if added to the pension, exceeds the amount of the salary which the officer received before his being pensioned. . . . .

§61

A civil servant must be retired if and when he is permanently unable to fulfil his official duties on account of blindness, deafness, or another physical defect, or on account of the weakness of his physical or mental forces.

§62

If the civil servant in such a case does not apply for his retirement, he, or if necessary his guardian, shall be informed by the superior authority that he is to be retired. The reasons for his retirement and the amount of his pension are to be stated.

§68

If a civil servant has become disabled for the service before the time when he would have acquired the right to a pension, he may be retired against his will only by the procedure which is provided for formal disciplinary action.

§72

A civil servant who violates the duties incumbent upon him (§10, §10*a*, §10*b*) commits an offense and is subject to disciplinary punishment.

[There exists a controversy as to whether disciplinary procedure is a kind of criminal procedure or not. Some hold that it is in the interest of the civil servant; for it regulates the conditions under which a civil servant may be dismissed or punished, while the employees of private corporations are dismissed without formal procedure. Of course acts which are subject to criminal prosecution are also subject to disciplinary action because they violate the dignity and duties of office. The following provisions of the National Statute of Officers are modeled after the Prussian statute of July 21, 1852.—Editor.]

§73

The disciplinary penalties consist of : (1) minor penalties (*Ordnungsstrafen*); (2) removal from office.

§74

Minor penalties are: (1) warning; (2) reprimand; (3) money payment—in the case of salaried civil servants, up to one-half of the amount of the (monthly) salary which the civil servant was entitled to at the time the penalty was being inflicted.

§75

Removal from office may consist in: (1) transfer as a penalty, (2) dismissal from the service. The latter involves loss of rank and loss of the title to a pension.

§76

Which of these various penalties as set forth in §73 to §75 is to be applied shall be determined with reference to the seriousness of the offense, giving due consideration to the entire conduct of the accused.

If an offense against §10*a* paragraphs 2 and 3, is committed, dismissal from service shall follow.

[The following sections, 77–79, discuss the relationship between disciplinary and ordinary court procedure; the latter ordinarily takes precedence.]

§80

Every superior in the service has the right to issue warnings and reprimands to his inferiors.

§81

Penalties in the form of money payments may be inflicted: (1) by the highest national authorities upon all civil servants and up to the highest admissible amount; (2) by the authorities immediately inferior to the highest authorities and by the heads of (independent) establishments up to a quarter of the highest admissible amount; (3) by still inferior authorities and heads of similar establishments up to one-thirtieth of the highest admissible amount.

§82

Before a minor penalty is inflicted, the civil servant must be given an opportunity to defend himself regarding the violation of his official duties of which he is accused.

The infliction of minor penalties takes place by written decree or entry into the official record; in both cases the reasons must be stated.

§83

Appeal against minor penalties lies only to the superior authorities (in the administrative service itself—*Instanzenzug*).

§84

Formal disciplinary procedure must precede dismissal from office. The starting of such procedure shall be ordered by the respective highest national authorities.

The disciplinary procedure consists of a preliminary investigation in writing and in oral argument.

§85

The respective highest national authority appoints the civil servant who is to conduct the investigation and those civil servants who shall have to perform the function of state's attorney during the disciplinary proceeding.

§86

The disciplinary authorities which assemble as necessity arises are: (1) the disciplinary chambers as courts of first resort; (2) the disciplinary court as a court of second resort.

[Here follow detailed provisions regulating disciplinary procedure and the organization of disciplinary chambers just mentioned. These were supplemented by a decree of the federal council (*Bundesrat*) of April 18, 1880.]

§89

Every disciplinary chamber consists of seven members. The president and at least two other members must be members of a regular law court of the commonwealth or the states. . . . . The remaining members shall be taken from the civil service.

§91

The disciplinary court consists of thirty members, of which ten must also be members of the national council, while the president and at least fourteen of its members must belong to the national judicial court (*Reichsgericht*).

[It deserves attention that most members of the national council are civil servants.—EDITOR.]

§125

Temporary dismissal from service (suspension from office) of a civil servant has to take place as a matter of law:

1. If imprisonment has been ordered as a result of criminal proceedings, or if a judgment has been pronounced which would entail the loss of office as a matter of law, even though such judgment has not yet come into force.
2. If a decision which inflicts dismissal from service has been pronounced even though it has not yet come into force.

[This suspension from office is not a penalty but a temporary measure which leaves to the officer the office and the duties which it entails, but not the right to exercise the powers connected with it. Such suspension is justified therefore by the interest of the service, the dignity of the office, and similar considerations.]

§128

During the suspension of the civil servant half of his salary shall be withheld after the month during which the suspension has been ordered.

§130

If the officer is acquitted (on appeal), that part of the salary which has been withheld must be completely paid out to him.

§134

The ascertainment of deficiencies in public or private property which are discovered in national funds (*Reichskasse*) or other national administrative offices shall first be undertaken by the authority to whose business the direct supervision of such an account or administrative office belongs.

§135

Such authority shall at the same time ascertain whether a civil servant and, if so, which civil servant in the particular case is liable for the deficiency according to the provisions of §141, and what amount of money is involved if the deficiency is one of materials.

§137

Such authority as was designated in §134 and §135 shall render a decision, in writing (*Beschluss*), stating its reasons regarding the amount of the deficiency, the person of the civil servant liable for restitution, and the reason for his liability.

§141

Such decision may demand the immediate restitution of the deficiency: (1) from every civil servant who is, according to the judgment of the national authority, found guilty of embezzlement either himself or as a participant; (2) (*a*) from those civil servants to whom the administration of the fund, etc., had been intrusted . . . . ; (*b*) from every other civil servant who had to participate in the receiving or paying, the soliciting, the delivery or the transport, of such funds or other objects on account of his official position; but this responsibility shall be limited to the amount which had come under his custody, provided always that the deficiency is a result of gross negligence —the extent of such negligence to be determined by the national authority.

§144

Appeal lies not only to the higher authorities (*Instanzenzug*) but also to the ordinary courts against any decision by which a civil servant is declared responsible for the restitution of a deficiency. Such appeal may concern the amount as well as the question of any responsibility whatsoever.

The time within which such appeal can be taken to the ordinary courts is limited to one year. . . . .

§147

If an attachment has been ordered by the superior authorities. . . . , the court in whose district the seizure has taken place shall, upon application of the civil servant against whom the seizure was directed, order that within a stated period the decision as provided in §137 to §140 shall be filed.

If such order is not obeyed the court shall upon a further application of the civil servant concerned immediately vacate the attachment; otherwise the provisions of §144 come into operation.

§149

Ordinary process of law shall apply to property rights of civil servants which have their origin in the service relationship, particularly to titles to salary, temporary retirement allowance, or pension, as well as to certain allowances granted to the surviving dependents of civil servants.

[This paragraph and the following limiting provisions must be interpreted in the light of the corresponding constitutional provisions. See Document No. 1.]

B. Statute Regarding the Surviving Dependents of Civil Servants (May 17, 1907)

§1

The widow and the legitimate children of civil servants who would have been entitled to a pension in case of their retirement, as well as the widow and the legitimate children of retired civil servants who were entitled legally by §39 of the Civil Service Act to a lifelong pension shall receive a widow's and orphans' allowance.

§2

The widow's allowance amounts to 60 per cent of the pension to which the deceased was entitled. . . . .

The orphans' allowance shall amount annually to: (1) one-fifth of the widow's allowance for each child whose mother is still living and was at the time of the death of the deceased civil servant entitled to a widow's allowance; (2) one-third of that allowance for each child whose mother is no longer alive or was at the time of the death of the deceased civil servant not entitled to a widow's allowance.

§14

The right to receive the widow's or orphans' allowance ceases: (1) at the end of the month in which the widow marries or dies; (2) at the end of the month in which an orphan completes his eighteenth year.

C. EXTRACTS DEALING WITH CIVIL SERVANTS TAKEN (1) FROM THE CIVIL CODE (BÜRGERLICHES GESETZBUCH) AND (2) FROM THE STATUTE INTRODUCING IT (EINFÜHRUNGSGESETZ)

1. CIVIL CODE

§411

If . . . . a civil servant . . . . assigns the transferable part of his salary, temporary retirement allowance or pension, the paying office must be notified by way of a deed executed by the civil servant and certified by a notary public. Until such notification has taken place, the assignment is to be treated as not known to the paying office.

§1315

Persons belonging to the army and those state officials for whom special permission is required before marrying, must not marry without such permission as is required.

§839

If a civil servant violates with malice prepense or through neglect the official duty incumbent upon him toward a third person, he must make amends or pay compensation to such third person for the resulting damage. If the civil servant can only be charged with neglect, he can only be called upon (for compensation) if the damaged person cannot get compensation in another way.

The obligation to compensation is not incurred, if the damaged person has failed with malice prepense or through neglect to avert the damage by the use of available legal means.

§841

If a civil servant who in the course of his official duties has to appoint another person to manage the business of a third person or has to supervise such management or has to participate in it through the approval of legal transactions, and if such civil servant then through the violation of his duties becomes responsible together with the other person for the damage caused by the other, then in that case the other person is alone obligated in their relation to each other.

[For the concept of the general debtor (*Gesamtschuldner*) underlying the provisions of this paragraph to which they form an exception, the reader should consult sections 421 ff. of the civil code.—EDITOR.]

§400

A claim (*Forderung*) cannot be assigned to the extent to which it is not subject to attachment.

§197

Claims for . . . . salaries, retirement allowances, pensions . . . . , and all other regular payments . . . . become superannuated within four years.

§1784

A civil servant . . . . who according to state law needs a special permission for undertaking a guardianship shall not be appointed as a guardian without such special permission.

§1888

If a civil servant has been appointed a guardian, the court for the protection of wards has to dismiss him if the permission required by state law . . . . is refused or withdrawn. . . . .

2. Statute

ARTICLE 77

Statutory provisions of the states . . . . which provide for the liability of the states, the communes, and other communal federations for damage done by their civil servants in the exercise of the public authority intrusted to them . . . . remain in force.

ARTICLE 78

Statutory provisions of the states according to which civil servants are liable for representatives and assistants appointed by them to a greater extent than is provided for in this code remain in force.

ARTICLE 80

Unless there is made special provision in the civil code, the statutory provisions of the states regarding the property claims and obligations of the civil servants . . . . arising out of their official and service relationship and including the claims of their survivors remain in force.

ARTICLE 81

The statutory provisions of states which limit the transferability of claims of the persons mentioned in Article 80 . . . . remain in force.

D. Extracts from the Penal Code (*Strafgesetzbuch*) Concerning Civil Servants

SECTION 28. CRIMES AND OFFENSES COMMITTED IN OFFICE

§230

Whosoever causes bodily injury to another by neglect will be punished. . . . .

If the perpetrator was bound by the duties of his office . . . . to observe the diligence which he neglected, the punishment can be increased to three years' imprisonment.

§331

A civil servant who accepts, requests, or is promised gifts or other advantages on account of an action which belongs to his office, although it is not contrary to his duties will be punished by a monetary fine up to 300 marks or with imprisonment up to six months.

§332

A civil servant who accepts, requests, or is promised gifts or other advantages on account of an action which involves a violation of an official or service duty will be punished with imprisonment and hard labor up to five years. This crime is called bribery (*Bestechung*).

If extenuating circumstances exist, imprisonment only will be the punishment.

§338

A civil servant . . . . who in conducting or deciding a legal affair becomes guilty of distorting the law with malice prepense . . . . shall be punished with imprisonment and hard labor up to five years.

§339

A civil servant who by the abuse of his official authority or by threatening to thus abuse it illegally compels another person to act, suffer, or abstain will be punished with imprisonment and hard labor.

The attempt is punishable.

§340

A civil servant who in the exercise . . . . of his office commits a bodily injury . . . . with malice prepense will be punished with imprisonment of not less than three months. If extenuating circumstances exist, the penalty may be reduced to one day's imprisonment or a fine up to 900 marks.

If the bodily injury is a heavy one, the judgment shall be not less than two years' imprisonment and hard labor. If extenuating circumstances exist, the penalty shall be imprisonment of not less than three months.

§341

A civil servant who with malice prepense and without being entitled thereto undertakes or orders an arrest . . . . will be punished with at least three months' imprisonment.

§342

A civil servant who commits in the exercise or in connection with the exercise of his duty an infringement of the domestic peace (*Hausfriedensbruch*—cf. §123), will be punished with imprisonment up to one year or with a fine up to 900 marks.

§343

A civil servant who during an examination employs means of coercion or orders such means to be employed, in order to extort confessions or statements, will be punished with imprisonment and hard labor up to five years.

§344

A civil servant who with malice prepense moves or decrees the opening or the continuation of an investigation to the detriment of a person whose innocence is known to him shall be punished with imprisonment.

§346

A civil servant . . . . will be punished with imprisonment and hard labor up to five years, if he neglects to prosecute a punishable act with the purpose of withdrawing a person illegally from his legal punishment. The same punishment shall take place if a civil servant commits an act which is of the nature to produce an acquittal or a punishment not corresponding to the law. The same punishment shall take place if a civil servant does not attend to the execution of the sentence as pronounced. . . . .

If extenuating circumstances exist, imprisonment of not less than one month shall take place.

§348

A civil servant who as notary public certifies falsely a legally relevant matter with malice prepense or who enters such a matter falsely in public registers or books will be punished with imprisonment of not less than one month.

§349

If one of the acts designated in §348 is committed with the purpose of securing pecuniary gain to somebody or of damaging someone else, the punishment shall be imprisonment up to ten years and at the same time a monetary fine of from 150 to 3,000 marks.

§350

A civil servant who embezzles money or other things which he has received into official custody, will be punished with imprisonment of not less than three months. . . . .

The attempt is punishable.

§353

A civil servant who collects taxes, fees, or other payments for a public office will be punished with imprisonment of not less than three months if he collects payments which he knows the payee does not owe at all or only to a lesser amount, provided he does not bring to the office all that he has thus illegally collected.

§354

A civil servant in the service of the foreign office of the German commonwealth who violates the secrecy of office by communicating illegally documents which are officially intrusted or available to him . . . . will be punished with imprisonment or with a monetary fine up to 5,000 marks. . . . .

Equal punishment will be inflicted upon a civil servant who is intrusted with a foreign mission or is employed in one, if he acts contrary to the official instructions of his superiors with malice prepense, or if he reports fictitious or distorted facts with the purpose of misleading his superior in his official activities.

§354

A civil servant in the post-office who opens or suppresses letters and parcel post intrusted to the mails in other cases than those provided for by law, or who knowingly permits such action to another, or who knowingly assists him therein shall be punished with imprisonment of not less than three months.

§355

Civil servants of the telegraph office . . . . who falsify telegrams intrusted to the telegraph office or who open or suppress them in other cases than those provided for by law, or who illegally notify third persons of their content, or who knowingly permit another person such actions or who assist another person knowingly therein, will be punished with imprisonment.

Telephone messages are to be treated in the same way as telegraph messages.

§357

An official superior who induces his inferiors to a punishable act with malice prepense . . . . or who permits such a punishable act of his inferiors knowingly will incur the punishment appropriate to the act.

§359

Civil servants in the meaning of this code are all persons who are employed in the service of the commonwealth or of one of the states directly or indirectly, irrespective of whether they are thus employed for life, for a stated period, or provisionally. It makes no difference whether they have taken the oath of service or not. . . . .

DOCUMENT NO. 3

PRUSSIAN COMMON LAW PROVISIONS

The third document consists of an extract from the Prussian general code of 1794. This section dealing with civil servants put more or less into final form the slowly evolved official service relationship. It has been expanded and superseded in many respects, most of which have been omitted, but its fundamental tenets are still valid and are likely to be the foundation of any new enactment.

PRUSSIAN GENERAL CODE (*ALLGEMEINES LANDRECHT*)

PART II, TITLE X

CONCERNING THE RIGHTS AND DUTIES OF THE SERVANTS OF THE STATE (CONDUCT OF OFFICE, DISMISSAL)

§70

An office shall not be conferred upon anyone who is not qualified sufficiently, and has not given evidence of his ability.

§71

Special laws and instructions shall determine who should appoint to the different kinds of civil service positions, who can be appointed, and what preparations and examinations (depending upon the different departments and ranks) have to precede the appointment.

§84

Title and rank which are connected with an office, together with the other privileges, are bestowed by the issuance of letters patent.

§87

Whatever a civil servant undertakes in virtue of his office and according to the orders relative thereto cannot be made the basis of a legal action for insult against him.

§88

Whoever takes over an office must attend with the greatest diligence to its conduct.

§89

An officeholder is responsible for every mistake which with reasonable attention and the knowledge which the office requires could and should have been avoided.

§90

Superiors, who could have hindered an official misdemeanor of their inferiors by proper attention according to directions, are answerable for any damage which results from such inattention, and they are answerable to the state as well as to private persons who suffer therefrom.

§91

But in both these cases the civil servants shall be held personally responsible only if no other legal means is left by which the detrimental consequences of such mistakes can be remedied.

§92

No civil servant may leave the place of residence which has been assigned to him for the exercise of his duties without the knowledge and consent of his superiors.

§94

The office or civil servant of higher resort (*Instanz*) upon which the appointment to an office depends must also be appealed to for discharge.

§95

Such discharge shall be denied only if a considerable disadvantage for the commonwealth is to be feared as a result thereof.

§97

In no case may the discharged civil servant leave his office before disposition has been made regarding the refilling or temporary administration of such office.

DOCUMENT NO. 4

SALARY ACT

In the year following the enactment of the constitution it was found necessary to revamp entirely the classification of civil servants for purposes of salaries, pensions, etc., although a general new civil service code could not be enacted at that time (April 30, 1920). A separate statute, the salary act, was therefore enacted. This has been amended frequently. It was recently found necessary to re-write it, while the general code remains still in abeyance. In the following document we give a few of the provisions which seem to be more or less permanent (*Besoldungsgesetz*, December 16, 1927).

The expression "permanent civil servants" (*planmässige Beamte*) has taken the place of the expression "civil servants employed for life" (*lebenslänglich angestellte Beamte*) of earlier enactments. An official is *planmässig* if his office is provided for in the budget (*Haushalts—plan*), i.e., more or less permanent. The older expression seemed somewhat of a euphemism after the summary dismissals under the ordinance providing for the curtailing of governmental personnel (*Personalabbauverordnung*, 1923) and the corresponding provisions in the annual budget acts which follow it in essential respects.

SALARY ACT

§1

1. The permanent civil servants (*planmässige Beamte*) shall receive a basic salary and an additional rent allowance. Besides these they shall receive additional allowances for children and other additions in so far they are proprovided for or permitted by this act.

§2

The basic salary shall be granted to permanent civil servants according to the classification schedule A (for rising salaries). . . .

§3

1. [Within each class] the basic salaries shall be regulated according to ranks of seniority. . . .

2. They rise every two years until the final basic salary [in any class] is reached.

§7

In advancing from one group to another with an equal or higher final basic salary the officer shall [in the new group] receive the next higher salary for two years. . . . .

§8

1. The civil servant shall be notified in writing regarding his rank of seniority for classification purposes (*Besoldungsdienstalter*).

2. The decisions of the administrative authorities regarding the rank of seniority for classification purposes shall be authoritative in adjudicating property claims made by the civil servant in court.

§9

1. The permanent civil servant shall receive an additional rent allowance according to the attached schedule if he has his official residence within the commonwealth. . . . .

§13

1. The rent allowance shall be granted according to the local class of the official residence.

[An elaborate classification table for all cities, towns, and rural districts has been worked out. It provides for four different classes. This classification table has been subject to frequent amendments since its first publication. A more recent list is to be found in the ordinance of October 23, 1924.—EDITOR.]

§14

1. The civil servants shall receive an additional allowance of twenty marks a month for each legitimate child under twenty-one years of age.

2. The following shall be treated like children for the purposes of this act: (1) legitimized children; (2) adopted children; (3) step children who have been taken into the home of the civil servant; (4) illegitimate children, if the parenthood of the civil servant is established and he has taken the child into his home or otherwise demonstrably takes care of its entire support, or if the complete support has to be given by a woman civil servant as mother.

3. The additional allowance for children of more than sixteen and under twenty-one years of age shall only be granted if they still go to school . . . . and do not have an income of their own of at least 30 marks a month.

4. The additional allowance for children who are permanently disabled . . . . shall be granted without regard to their age.

§15

1. Allowances which are not provided for in this act shall only be granted to the extent to which the national budget provides for them. . . . .

§24

1. Civil servants who are used in offices of a lower salary as a result of the reorganization of the national authorities . . . . , shall receive the amounts which they, according to the provisions of this act, would have received in their former position.

§39

Changes of salaries . . . . as regulated by this act as well as alterations in the classification of the civil servants . . . . may be effected by statutory enactment.

If civil servants are placed in a more disadvantageous position by such an alteration *ex post facto* . . . . . they shall not be reimbursed for the difference.

§40

For the next five years, beginning with April 1, 1928, one of each three vacant or vacated permanent civil service positions . . . . shall be abolished. Exceptions are permissible only with the consent of the minister of finance. Quarterly lists of admitted exceptions shall be submitted to the committee on the budget [of the national parliament].

DOCUMENT NO. 5

RECRUITMENT AND PROMOTION

Recruitment and promotion in the German civil service are subject to separate regulation by each authority (*Behörde*) within the general provisions of the National Civil Service Act (cf. Document No. 2) and the Salary Act (cf. Document No. 4).

The service is divided into four main groups, each of which has its separate rules for recruitment. These are called the higher service, the higher middle service, the middle service, and the lower service. On the whole, entry is limited to entry into the basic group of each main group. But provision has been made for promotion from one main group to the next. As will be seen from the following documents, entry into the main groups takes place on the basis of a general educational requirement and an examination after a period of apprenticeship. It is at this point that the civil service system in Germany is so closely linked up with the system of public school education and state university training. Since the entire educational system is in the hands of the government, it becomes possible to accept diplomas from these institutions as bona fide evidence for candidates wishing to enter the service of the government, or, in the case of the universities which have retained a modicum of their medieval corporate independence, to work out examinations before committees consisting in part of professors and in part of members of the civil service (the so-called state examinations).

In case of promotion from one main group to the next, quality of the service in the lower group is accepted in lieu of the general educational requirement and of the period of apprenticeship, so that promotion depends exclusively upon service rating and examination. The examinations are not given by a separate civil service commission, but by a set of examination committees organized within each ministry or other division of the service.

In order to illustrate these several aspects, we give in the following documents extracts from the *Personalneuordnung* of the National Postal Administration (NPTA) of July 1, 1922, published in the *Amtsblatt*, No. 31. Besides the ordinance itself, we give extracts from the appendixes attached to it regulating in detail the engagement, training, and appointment of the several classes of civil servants. Last, we give extracts from the detailed examination requirement of one group, the middle service; it again will illustrate the general nature of these examinations. Naturally they are considerably more elaborate in the case of the higher service.

RECRUITMENT AND PROMOTION

a) NEW REGULATION OF THE CONDITIONS OF CIVIL SERVANTS OF THE NATIONAL POSTAL AND TELEGRAPH ADMINISTRATION (NPTA)

From July 1, 1922, the civil service conditions of the national postal and telegraph administration will be subject to new regulation.

As candidates for the higher positions in the postal service, court referendaries are engaged, and for such positions in the telegraph and telephone service certified engineers are engaged. Both these are called postal referendaries. After three years' preparatory service, the postal referendaries are admitted to the postal assessor's examination which the former court referendaries and certified engineers have to pass for the postal and telegraph services respectively. . . . . The district postal directorates (*Oberpostdirektion*) are already provided with instructions for the engagement of certified engineers.

In the future, graduation from high school (*Reifezeugnis für die Unterprima*) is demanded of candidates for the higher middle service. Such candidates (supernumeraries) are admitted to the senior clerk's examination after three years' preparatory service. This office is their first permanent appointment. . . . . The regular middle service for men shall . . . . in the future be reserved for civil servants who are coming up from the lower service. . . . .

Women candidates are in the future accepted at once on a civil service basis. After two years' preparatory service, they are given a temporary appointment. After several years of such service, they are appointed permanently as assistant managers.

For the lower service, two classes of candidates will be accepted in the future, in so far as positions are not reserved for ex-service men, etc.

a) Young people from sixteen to seventeen years old will be appointed as postal apprentices with the character of civil servants. After two years' successful preparatory service, they will be appointed as assistant postmen.

b) Persons from eighteen to twenty-five years old after having rendered one year's service will be appointed as assistant postmen.

The highest permanent appointment (for both these groups) is that of postman.

. . . .

Every civil servant has the opportunity, by passing a prescribed examination, to succeed to a position in the higher service groups. Members of the higher middle service are admitted to the postal assessor's examination; women civil servants and members of the lower service are admitted to the senior clerk's examination. After having passed that, they are admitted to the examination for postal assessor. Admission to these examinations is regulated according to the need of the service.

Pre-eminently capable civil servants, whose rapid promotion into the higher services would be of substantial advantage to the administration, shall, with the consent of the national post ministry, be admitted in advance to the examinations. In cases in which the examination results are especially good, they will be promoted with priority. [Here follow transitory provisions which are of no general interest.]

b) Rules for the Engagement, Training, and Appointment of Civil Candidates for the Higher Service of the National Postal and Telegraph Administration

1. *General provisions.*—As candidates for the higher service of the national postal administration (postal referendaries), court referendaries who have completed the first six months of practical preparation within the service of a public authority . . . . and certified engineers are engaged.

In order to be appointed within the higher service of the NPTA, these candidates have to fulfil the following conditions: (*a*) at least three years of preparatory service in the field and central administration of the NPTA; in this period may be included certain work done outside the service; (*b*) the passing of an examination . . . . of the NPTA.

2. *Application and conditions for entry.*—The candidate should be healthy and strong; particularly ought he to possess good sight and hearing as well as good heart and lungs. It must be certain that his moral conduct is blameless and that he has an appropriate presence.

The application for entry as postal referendary should be sent in writing to the district postal directorate, located in the district in which the applicant resides. . . . . The application should state in which district the applicant wishes to do his preparatory service.

This application should include:

1) (*a*) If he is a court referendary, the diploma showing that he has passed the first legal examination and the testimony showing that he has passed the first six months of practical preparation within the service of a national authority. (*b*) If he is a certified engineer, the diploma showing this and the testimonials of the preliminary and main engineering examination in addition to testimony regarding the required practical work.

2) The graduation certificate (*Reifezeugnis*).[1]

3) The course records and other testimonials concerning the attendance of universities or engineering schools by the applicant.

4) A *curriculum vitae* of the applicant written by himself.

5) Testimonials regarding previous occupations.

6) Birth certificate.

Before entering the service the applicant has to secure also a written certificate about his health. This certificate has to be executed by a physician accredited by the postal authorities or by a physician in the public service.

The applicant has to present himself personally, if it is requested. If all these conditions have been fulfilled, the district postal directorate submits the application to the national ministry of the posts.

In selecting among the applicants, preference is given to court referendaries with particular knowledge of social, economic, transportational, or communicational problems, and to such certified engineers as have specialized in electrical engineering, particularly in telephone engineering.

Only as many court referendaries and certified engineers as the service requires will be engaged.

The national ministry of posts decides who shall be admitted and designates the district postal directorate which has to direct and supervise the training of the applicant.

3. *Oath of office and appointment as postal referendary.*—Upon entry the court referendaries and certified engineers are obliged by oath as civil servants of the NPTA and are given the official title postal referendary.

During the period of training they may receive a revocable contribution toward their living expenses. . . . .

4. *Training during the preparatory period.*—(*a*) Training of the court referendaries in the postal service. The postal referendary is given work at least during twelve months in a post-office of middle size where there is opportunity for his being trained in all branches of the postal, telegraph, and telephone service; two months in a railway post-office; four months at a telegraph office which is connected with a telephone exchange; and two months at a regular telephone exchange. . . . . There follows a period of training at the postal directorate lasting at least nine months, during which the postal referendary should have opportunity to become acquainted with the business and the organization of the treasury of the postal directorate. During the remainder of his period the referendary will be employed in different ways and if he has become sufficiently acquainted with the service, he may be used occasionally as a substitute and for the carrying out of special jobs.

(*b*) The training of certified engineers. . . . .

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[1] This is a certificate entitling a person to graduate study in a university, standing somewhere halfway between graduation from a good American high school and graduation from a good American college, corresponding, therefore, roughly to graduation from a junior college of good standing.

5. *Written work.*—The postal referendary has to write a thesis every half-year. The subjects of these theses are set by the postal directorate. . . . . In lieu of such a written thesis the referendaries may be asked to prepare a report from a set of documents.

6. *Interruption of the period of training.*—The time during which the postal referendary was not in the service, due to illness or vacation, up to eight weeks each year, will be counted toward his three years.

7. *Conduct of the referendary.*—A postal referendary who behaves badly or who neglects his training may be dismissed by the ministry of posts without further procedure.

8. *Examination for postal assessor.*—After finishing the preparatory service, the postal referendaries have to pass an examination before the superior examination board established by the ministry of posts. The application for admission should be submitted to the district postal directorate under which the referendary is working at the latest four years after entering the service as referendary. In case this period is exceeded without excuse, dismissal from the service may result therefrom. The ministry of posts decides about admission to the examinations.

The examination should be passed according to the special nature of the applicant's training for either the postal or the telegraph service. It can be repeated only once. If the repeated examination is unsatisfactory, the candidate has to leave the higher service.

9. *Further career.*—Postal referendaries who have passed the examination are appointed as postal assessors. They are given positions according to ability and seniority within the salary group AX . . . . and may later be promoted into higher positions. Until they receive a permanent appointment, they are given temporary employment.

. . . .

c) RULES FOR THE ENGAGEMENT, TRAINING, AND APPOINTMENT OF CIVIL CANDIDATES FOR THE LOWER SERVICE OF THE NATIONAL POSTAL AND TELEGRAPH ADMINISTRATION

1. *General.*—The engagement of civil service candidates for service in the NPTA of [the lower] salary groups is as postal apprentice or assistant postman and as letter-carrier or office helper. The candidates should be healthy and strong; especially ought they to possess good sight and hearing as well as good lungs and be of irreproachable character.

2. (*a*) *Postal apprentices.*—Young people from sixteen to seventeen years who have completed the public school (excluding compulsory continuation school) are engaged as postal apprentices on a civil service basis. They will be trained in all the simpler services in the postal or in the telegraph and telephone service. They have to take the compulsory instruction. They may receive, according to the existing rules, a revocable contribution toward their living expenses out of the postal treasury. Apprentices who, in and out of the

service, do not satisfy the requirements can be dismissed at any time by the district postal directorate. The preparatory service lasts for two years. After completing it successfully, the apprentices are appointed as assistant postmen. As such, they are employed on a wage-earning basis until they have completed their twentieth year. Beginning with their twenty-first year, they are engaged as non-permanent civil servants, subject to dismissal on three months' notice. They can be dismissed from the service by the district postal directorate without observing this period of notice, if they are guilty of any act incompatible with the service, or if by their behavior outside of the service they prove themselves unworthy of the esteem which their profession demands.

(*b*) *Assistant postmen.*—In so far as the available positions of assistant postman cannot be filled by postal apprentices, persons from eighteen to twenty-five years old with ordinary public school education are accepted on trial as assistant postmen . . . . for a preparatory period of one year. The candidates have to prove by an examination the degree of elementary education reached. If, during the preparatory period, they do not satisfy the requirements in or out of the service, they may be dismissed at any time by the district postal directorate. After one year's training in the service and satisfactory attendance of the compulsory instruction, they are engaged on a wage-earning basis, unless they have completed their twentieth year in which case they are engaged as non-permanent civil servants, subject to dismissal on three months' notice, as under (*a*).

(*c*) *Letter-carriers or office helpers.*—For the very simple business of the service which requires neither special school knowledge nor an expert training, postal helpers and other persons who have been employed as workers for a comparatively long period of time in the postal and telegraph service . . . . are appointed as letter-carriers or office helpers, unless persons entitled to state aid apply for these positions. They shall not in general, at the time of their appointment, have passed their thirtieth year. Their permanent appointment follows one year's trial, up to the expiration of which they can be dismissed without notice and after the expiration of which they can be dismissed subject to three months' notice. If the candidate immediately before his appointment was employed as a worker in the NPTA . . . . then the period of this employment is counted as part of the trial period. . . . . If the civil servant proves satisfactory, the appointment is made permanent five years later. After a comparatively long period of satisfactory service and in cases of special ability, these civil servants can become postmen or chief office helpers. By doing so, they acquire the same rights as postmen.

3. *Application.*—The application for admission as postal apprentice, assistant postman, letter-carrier, or office helper is to be addressed to the district postal directorate in whose district the candidate wishes to be admitted. The petition should include: (1) The school record, and in case the candidate

does not come directly from school into the postal or telegraph service, complete and definite official or otherwise credible credentials about his occupation and conduct since leaving school. (2) The statement of his career, composed and written by the candidate. (3) Birth certificate, if his age is not shown in one of the official documents submitted. (4) If the candidate is not of age, a certificate of his father or guardian that he or she approves of the candidate's entry as postal apprentice or as assistant postman.

Before entering the service, the candidate has to secure a written certificate about his health. This certificate has to be executed by a physician accredited by the postal authorities or by a physician in the public service.

4. *Appointing authority.*—Appointment of postal apprentices, assistant postmen, and letter-carriers or office helpers is made by the district postal directorate according to the needs of the service. . . .

5. *Permanent appointment as postman.*—Assistant postmen who have proved satisfactory as civil servants are appointed as postmen according to the appropriate rules. The appointment is for life.

6. *Examination for the position of general assistant.*—Assistant postmen who have been employed for at least three years after finishing their preparatory apprentice or trial service, if they have proved satisfactory and have shown themselves skilful, circumspect, and capable of making decisions, can apply for examination for general assistants' positions in the postal service or in the telegraph and telephone service, according to their training. They are summoned for examination according to the needs of the service.

The examination is to be passed before the examination committee of the district postal directorate. It should prove that in addition to the general education required for the middle service the civil servant has acquired the necessary professional knowledge to take care of the postal or telegraph service on his own responsibility. The examination may be repeated only twice and only in its entirety. The period within which the examination is to be repeated is set by the examination committee; it may not exceed twelve months.

7. *Permanent appointment of assistants of management and of general assistants.*—Postmen and others who pass the examination for assistants and who have proved satisfactory since that time are made assistant managers according to the seniority in rank established by the date of their examination. Thereafter they are promoted to positions of general assistant as soon as such are available. In cases of particular merit, they can be promoted later to clerkships as far as such places are available.

8. *Chief clerk's examination and higher career.*—Civil servants who have proved satisfactory may apply for examination for the advanced middle postal service or for the advanced middle telegraph service, but not earlier than three years after securing a rank from the assistant's examination. After passing this test, they enter next the chief clerks' positions, etc., whenever

such are available. By further examinations they are promoted to places in the higher groups of the advanced middle service according to the same principles as the officials of the supernumerary career.

Eight years after having acquired the seniority ranking by passing the chief clerk's examination, they can apply for the postal assessor's examination just as the rest of the members of the advanced middle service. They may according to their ability enter the positions of the higher service wherever such positions are available. Such entry shall be determined by ability as well as by seniority established by their examination.

9. *Promotion of superior postmen.*—Postmen who have not passed the assistant's examination but who have proved themselves especially capable and who are fitted for the positions in which special ability is required can be promoted to positions as superior postmen whenever such positions are available. The selection takes place according to the requirements of the service with some consideration given to seniority.

d) INSTRUCTION FOR THE EXAMINATION OF GENERAL ASSISTANTS IN THE POSTAL AND TELEGRAPH SERVICE

Types of examination.—Different examinations for general assistants are held according to the training of civil servants: (1) For the general postal service. (2) For the postal money order service. (3) For the telegraph and telephone service. (4) One for the telephone service limited to women civil servants, who are employed in the telephone offices of the great cities and who have been constantly employed in such offices only.

Place of examination.—The examinations take place at the general district postal directorate (*Oberpostdirektion*).

Examination committee.—The examination committee consists of three members: a councilor of the district postal directorate as chairman, a civil servant of the postal service who belongs to [the higher service] and a civil servant [of the middle group] chosen in consultation with the competent civil service committee[1] according to specific regulations. At examinations for the telegraph or telephone service, all three members must be trained by preference for those branches of the service; at the examination for the postal money order service, at least two members must be especially well acquainted with this branch of the service, and at the examination for the telephone service, the member to be chosen in agreement with the civil service committee must be a woman.

Application and admission to the examination.—The application should be sent by the civil servant to the district postal directorate, after having been presented to the office at which he is employed. Such applications may be made by (1) women civil servants after the expiration of one year's non-permanent service, (2) superior postmen and such postmen and assistant postmen who have spent at least three years in these positions after finishing their preparatory service. The employing office has to state in an accompanying report whether the civil servant has proved satisfactory and whether he can be admitted to the examination considering his knowledge and ability. Unnecessary difficulties (formal preparatory tests) are to be avoided. The district postal directorate decides upon the admission to these examinations according to the needs of the service. . . . .

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[1] Cf. Document No. 6.

Time of examination.—The civil servants are summoned for admission to these examinations in the order of their application. Seniority is decisive in cases of simultaneous application. The number of civil servants who are examined together shall not as a rule exceed six.

Purpose and extent of examination.—In the examination, the civil servant shall show that he has acquired the necessary expert knowledge in addition to the required general education for the middle service, in order that he may be able to direct the proper postal or telegraph service in his field on his own responsibility.

The examination consists of a written and an oral part.

The written examination shall show that the civil servant can express himself fluently and plainly, free from important mistakes in spelling, grammar, and sentence structure, and that he can take care of fairly simple written work.

The examination takes place in the presence of a member of the examination committee. The chairman of the committee states the problems upon the basis of suggestions by the other members. Every civil servant has to work out three written theses. (1) A brief description of the organization of the service. (2) A short report about a fairly simple incident in the service, and a draft of the negotiations, letters, etc., necessary for clarifying the incident. (3) Problems of the cash and accounting departments like calculating fees, ... drawing the cash balance for the day, computing the amount of necessary material, etc.

The problems are to be set according to the civil servant's education in the service. . . . .

The civil servants have the choice of presenting their examination as draft or as fair copy.

A period of at most two consecutive hours is provided for working out each thesis so that the written examination takes a day. The supervising member of the examination committee has to note the time that has been spent on each thesis. The members of the examination committee have to grade every paper separately and to transmit their decision to the chairman in a sealed envelope. Reasons should be given for the grade.

The oral examination is taken before the examination committee. The members of the examination committee agree among themselves on what subjects they will examine.

1. GENERAL SUBJECTS (FOR ALL SPECIAL FIELDS)

Organization of the NPTA, general status of the civil servants, the most important tasks of the NPTA, the organization of the German commonwealth and its political divisions, general geography, enough French so that the civil servant will understand French addresses, provinces, and be able to pronounce them intelligibly, the general rules for payment by postal money order.

2. SPECIAL SUBJECTS

a) *For the postal service.*—Postal fees and telegraph fees for inland communication, postal rules and regulations and the basic telegraph rules and regulations, the classification of letter and parcel post fees, the fees for sending letters abroad, the most important details of sending other mail abroad.

The receipt, dispatch, and direction of the mails . . . . , the distribution and delivery service, custom-house conditions, newspaper distribution, the procedure in postal protest, relation to the railway service, passenger transportation in connection with the regular transportation of the mails.

Receipt of telegrams, service at the sender and at the smaller telephone offices, a general engineering knowledge of the small telegraph establishments . . . . , and of the causes of the most frequent disturbances as well as the measures necessary for their correction. . . . .

The rules applying to loss and damage of the mails, regulations concerning special delivery and return replies.

Accounting practice of the postal and telegraph fees, balancing of the accounts of branch offices and accounting bureaus.

The basic features of the German railway system in its relation to the transportation of the mails . . . . , the location of the post-offices in the district, the more important centers in the adjoining districts, and the most important centers in the rest of the postal districts of the commonwealth, the counties, rivers, mountains, etc., used in designating the location of the place of destination of the mails.

[We omit the special subjects for postal money order, telegraph, and telephone service.]

FINAL GENERAL REGULATIONS

The question as to whether the examination has been passed, and in case of the affirmative whether with the predicate "satisfactory," good," or "excellent," is decided on the basis of the entire result of the written and oral examination by majority vote [of the committee or board of examiners].

The examination committee has to record in the documents the wording of the problems for the written work and the result of the examination.

A candidate who does not pass the examination may repeat it only in its entirety and only twice. The period after which the repeating may take place is set by the examination committee; it may not exceed twelve months.

DOCUMENT NO. 6

CIVIL SERVICE COMMITTEES

The promise held out in the constitution of Weimar for the establishment of special representation in the civil service has largely remained on paper. While representative bodies have been set up in a number of services, their activities have been limited, partly, no doubt, because the disciplinary court system has taken care of certain matters for which representative committees are needed elsewhere; for, as was shown in the foregoing, it provides for the participation of civil servants (cf. Document No. 2). We reprint here the translation of a regulation of the Prussian government (March 24, 1919), since no statutory provisions regulating such representation have appeared for either Prussia or the Reich.

In the meantime the agitation for civil service representation as provided for in the constitution has been actively carried on by the German federation of civil servants. A draft for a civil service representation act has come out of the committee of the national council (Reichsrat), but seems quite unsatisfactory to the federation, particularly because teachers and police are excluded under the provisions of the act. It seems fair to assume that some time will pass before anything comes of it.

REGULATIONS OF THE PRUSSIAN GOVERNMENT REGARDING THE FORMATION AND DUTIES OF CIVIL SERVICE COMMITTEES (MARCH 24, 1919)

Until further statutory regulation the following provisions regarding the formation and duties of civil service committees (*Beamtenausschuss*) shall be in force:

§1

In each office or bureau which employs permanently at least twenty civil servants a civil service committee shall be formed.

§2

The number of members of the committee shall be no less than five nor more than fifteen.

They shall be elected by secret ballot. Their position is honorary. All permanent civil servants in an office or bureau are eligible and entitled to vote without regard to their sex if they have completed their twentieth year.

The more detailed provisions regarding the number of members and the composition and election of the committee shall be made by the civil servants in the several bureaus themselves according to local needs.

For the time being the following groups of civil servants are recognized: (*a*) the higher civil service; (*b*) the bureau service; (*c*) the clerical service; (*d*) the remaining civil servants with or without technical education.

These groups of civil servants must be represented according to their number in the civil service committee.

It shall be made possible for the members of the committee to exercise the duties of this honorary office during regular office hours by appropriate distribution of the work. Their work [in the committee] has the nature of official service. It is to be counted as part of their time of service. The activities of the committees have to give way, however, to other official duties, if the public interest requires it.

The members of the civil service committee may resign from their office at any time by written communication to the committee. Such resignation must take place if it is demanded by two-thirds majority of the group of civil servants which elected the member.

§3

The civil service committee serves the purpose of strengthening the confidence between the administration and the civil servants, and of representing the interests of the civil servants so as to maintain a spirit of co-operation and to avoid friction with the head of the particular service.

The committee is entitled to state its opinion authoritatively regarding general internal matters of the service and to make representations in respect of the official and personal affairs of a civil servant if he applies to it.

In appropriate cases, the head of the particular administrative bureau shall give the committee opportunity to make such authoritative statements of opinion before orders concerning the internal service or personal affairs are issued, even though the committee has not taken the initiative in bringing up the particular question concerned.

In so far as the civil servant has the right to inspect entries into his own official record, a member of the committee shall have the same right, if such civil servant applies to him and consents to it.

§4

The members of the committee are obliged to secrecy regarding all affairs which have come to their knowledge on account of their activity (in the committee).

§5

In particular affairs concerning themselves, members of the committee may not participate.

DOCUMENT NO. 7

WORKS COUNCILS

It is well known that there exist enterprises and administrative services of modern governments which in view of their size and the conditions of work prevailing therein approach the conditions of work in private enterprises. For example, the German National Railways Corporation (*Reichseisenbahngesellschaft*) employed 410,000 wage-earners and 339,000 civil servants in 1925; the German postal administration, which includes telephones and telegraphs, employed 283,000 civil servants and 49,000 wage-earners and salaried employees in 1925. It was only natural, therefore, that the question of legally regulating employee representation should give rise to the further problem as to what extent such representation should be provided for in the administrative services. It was felt that while on the whole it was desirable to allow such representation, the special considerations which entered into the matter when government employees were concerned rendered special regulations necessary. Consequently, the Works Council Act (*Betriebsrätegesetz*, February 1, 1920) allowed special provisions. In the following document extracts are given from the Works Council Act as well as from one of the ordinances issued under its authority.

It must be kept clearly in mind, however, that the following regulations apply only to those employees who have not attained the status of civil servants. . . . . For the latter special representation is to be provided (cf. Document No. 5).

The Works Council Act creates legal bodies which shall represent the employees in the several establishments (*Betrieb*) in certain dealings with the employer. The works councils do not possess a full legal personality of their own in the usual sense. They are not juristic persons under public law. Rather the works councils occupy a novel intermediary status which may be designated as limited legal competence (*beschränkte Rechtsfähigkeit*) under public law.

Under the authority of the Works Councils Act ordinances have been issued by the national and several state governments conferring the power to create such councils upon the several administrative departments. The Prussian ordinance is reprinted here. Under the authority of these ordinances councils have been organized by a considerable number of these administrative departments. Besides the National Railways Corporation and the postal administration the financial administration and the ministry of labor have among others established such councils (cf. *RGBl* (1921), I, 1199; (1924), I, 733). We reprint as part of this document the ordinance creating the works councils in the postal administration as well as a statement regarding the allocation of duties between the members of the executive committee of the central works council for the German railways. There is a commendable English account which also gives a selected bibliography and will help toward a fuller understanding of the operation of the German works council.[1]

a) WORKS COUNCILS ACT OF FEBRUARY 4, 1920

§1

In order to safeguard the common economic interests of the employees (wage-earning and salaried) in their dealings with the employer and to support the employer in the efficient conduct of his business, works councils shall be constituted in all establishments which as a rule employ at least twenty employees.

§6

In all establishments in whose works councils both wage-earning and salaried employees are represented, special workers' councils and salaried employees' councils shall be established in order to safeguard the special economic interests of these groups in their dealings with the employer.

These councils shall be composed of the respective members of the two groups in the works council and of alternates who shall be elected by the members of the respective groups.

§13

By ordinance of the national government it may be ordered for the public authorities and the enterprises of the commonwealth . . . . that certain classes of civil servants . . . . shall be considered as wage-earning and salaried employees for the purposes of this act.

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[1] C. W. Guillebaud, *The Works Council—A German Experiment in Industrial Democracy* (Cambridge, 1928).

The state governments may issue similar ordinances concerning the public authorities of the states and communes. . . . .

Conversely, it may be ordered that certain groups of employees who have a prospect of being raised to official positions or who are employed by public authorities for the same or similar work as civil servants or temporary civil servants shall not be regarded as employees in the meaning of this act provided always that they enjoy the same rights in the formation of civil service committees (*Beamtenräte, Beamtenausschüsse*) as are enjoyed by regular civil servants.

§61

In the establishments and administrative departments of the commonwealth, the states, and the federations of communes which extend over a considerable part of the territory of the commonwealth or of a state or over several communal districts, the formation of the local and central works councils and the determination of their respective powers (*Befügnisse*) shall be regulated by administrative ordinance (*Verordnung*) according to the structure of the enterprise or administrative department.

The ordinance shall be issued by the respective competent national or state government after negotiation has been had with the economic association of the employees in question.

Such ordinance may also determine which parts of the enterprise or administrative department shall be considered as separate establishments in the meaning of this act.

§65

If there exists in an enterprise for which a works council has been established a committee for the civil servants (*Beamtenrat, Beamtenausschuss*) . . . . such works council and civil service committee may meet for the joint consideration of matters of common interest which are within the competence of both bodies.

§66

The works council is charged with the following duties:

1. It shall assist the management of the establishment with advice in order to secure . . . . as high an efficiency as possible. . . . .

2. It shall co-operate and assist in introducing new labor methods into the establishment. . . . .

3. It shall guard the establishment against disturbances, particularly shall it appeal to the conciliation board (*Schlichtungsauschuss*) . . . . in case of disputes between the works council, the whole body of employees, or any group or part thereof, and the employer if no settlement can be reached by negotiation—without prejudice, however, to the rights of the economic associations of wage-earning and salaried employees.

4. It shall superintend the execution of decisions affecting the entire enterprise which have been rendered by the conciliation board . . . . and which have been accepted by both parties.

5. It shall agree with the employer upon common working regulations [shop rules]. . . . .

6. It shall promote understanding among the employees as well as between them and the employer and shall intervene on behalf of the employees when their right of association is concerned.

7. It shall receive complaints from the councils of wage-earning and salaried employees and shall try to secure the removal of the grievances by negotiation with the employer.

8. It shall see to it that the dangers to health and from accident in the establishment are combated, and it shall assist the industrial inspectors and other officials concerned in combating these dangers by giving them suggestions, advice, and information, and, finally, it shall endeavor to insure that the provisions respecting industrial conditions and the regulations for the prevention of accidents are put into execution.

9. It shall participate in administering pension funds and industrial housing as well as other welfare schemes. . . . .

§78

The workers' councils and salaried employees' councils, or, where such councils do not exist, the works council is charged with the following duties:

1. It shall see to it that in the enterprise the legal provisions which have been made for the benefit of the employees and all authoritative collective agreements will be carried out in the establishment as well as all decisions which have been rendered by a conciliation board . . . . and have been recognized by the parties thereto.

2. It shall participate in fixing the wages and other conditions of work in so far as they are not already regulated under collective agreements. This shall be done in co-operation with the economic associations of the employees concerned. Among the conditions of work in which such councils shall primarily participate are the fixing of contract and of piece rates or the basis for fixing such rates, the introduction of new methods of paying the wages, the fixing of the hours of work . . . . , the regulation of vacations of the employees, the settling of grievances relating to the training and treatment of apprentices in the establishment.

3. It shall agree with the employer upon the shop rules. . . . .

4. It shall investigate grievances and endeavor to secure their removal by negotiating with the employer.

5. It shall appeal to a conciliation board . . . . in cases of dispute, whenever the works council refuses to appeal.

6. It shall provide that the dangers to health and from accident in the establishment as far as they affect their particular group are combated; it shall assist industrial inspectors and other officials concerned in combating these dangers by giving them suggestions, advice, and information; and, finally, it shall endeavor to insure that the provisions respecting industrial

conditions and the regulations for the prevention of accidents are put into execution.

7. It shall see to it as far as possible that persons disabled in the war or injured by accidents are employed according to their strength and capacities. It may do so by means of advice, suggestion, protection, and mediation in order to influence employer and co-employees.

8. It shall agree with the employer upon principles to be followed in employing employees of each group in the establishment. . . . .

9. It shall participate . . . . in the dismissal of employees.

b) Prussian Ordinance Regarding the Execution of the Works Council Act (March 8, 1920—RGBl., p. 147)

The Prussian government orders and ordains herewith as follows:

ARTICLE 1

§ 13. 1. The power under § 43, clauses 2 and 4, is vested in the following authorities:

a) for the public authorities and the establishments of the state in the competent minister of state,

b) for the public authorities and the establishments of the communes and federations of communes in the governing body of the commune or federation of communes,

c) . . . .

The previous consent of the central supervisory authority is required for any arrangements under (*b*) and (*c*). . . . . If consent is refused, the competent minister shall give the final decision upon request of one of the authorities concerned. The minister is also empowered to invalidate the respective orders of authorities under (*b*) and (*c*).

As a rule, only such civil servants and candidates shall be considered as wage-earning or salaried employees who perform the same work as wage-earning and salaried employees in private establishments of the same kind, and such civil servants or candidates who permanently work together with a great number of employees (cf. Works Councils Act, § 13).

ARTICLE 2

§ 6. In the enterprises and administrative departments of the state which extend over a considerable part of the territory or over several communal districts the provisions for executing § 61, clauses 1 and 3, shall be made separately for the several branches of the state administration after negotiation with the trade unions and other economic associations of the employees. The cabinet is competent for the promulgation of such provisions unless it transfers the competency in special cases to the individual ministers.

In the enterprises and administrative bureaus of the federations of communes which extend over a considerable part of the territory of the state or several communal districts, the power to issue these orders is vested in the governing body of the federation. Such provisions require the consent of the competent minister after the negotiation has been had with the respective associations of employees.

c) ORDINANCE REGARDING THE ESTABLISHMENT OF COUNCILS WITHIN THE NATIONAL POSTAL ADMINISTRATION

On the basis of § 61 of the Works Councils Act of February 4, 1920, it is ordered by the national government after negotiation with the economic associations of employees participating herein as follows.

A. STRUCTURE OF THE COUNCILS

Councils within the individual establishment, ... district works councils and a central works council shall be established within the national postal administration.

Councils (works council, workers council, salaried employees council, or works steward) shall be established: (1) one each for the post ministry in Berlin, the Munich section of the post ministry, the Institute for Telegraphic Technology (*Telegraphentechnisches Reichsamt*) as well as for each of the central offices within the jurisdiction of the Munich section of the post ministry; (2) within the district of each district postal directorat (*Oberpostdirection*) for every independent administrative unit (the district postal directorate itself . . . .).

§4

Dependent administrative units (branch offices) shall receive a special council only if they are not located at the same place as the major post-office (*Hauptamt*).

II. DISTRICT WORKS COUNCILS

§6

For the district of each district postal directorate there shall be established a district works council at the seat of the district postal directorate.

§7

The district works council consists of four members in districts with a thousand or less employees. For each additional thousand and also for a fraction of at least five hundred there shall be one additional member. The maximum number shall be twelve.

The national postal administration shall determine the number of employees in the several districts in co-operation with the councils in the individual establishments. . . . .

§8

The members of the district works councils shall be elected for one year from among the eligible employees of the district by the employees of the district who are entitled to vote. The balloting shall be direct and secret and according to the principles of proportional representation.

For the entire jurisdiction of the national postal administration there shall be established a central works council within the post ministry in Berlin.

§10

Five members shall be elected for the first twenty thousand employees of the postal administration and one for each additional ten thousand and one for a fraction of at least five thousand. . . . . The maximum number of members shall be fifteen.

§11

The members of the central works councils shall be elected for one year from among the eligible employees of the district by the employees of the district who are entitled to vote. The balloting shall be direct and secret and according to the principles of proportional representation. . . . .

B. DELIMITATION OF THE POWERS OF THE COUNCILS

§12

The local councils (works council, workers' council, salaried employees' council or works steward) shall concern themselves only with local affairs under the powers granted to them by the Works Councils Act . . . .

The district works council shall handle all matters assigned to a works council by the Works Council Act . . . . in so far as such matters go beyond the jurisdiction of the local administrative units but not beyond the jurisdiction of a district postal directorate. . . . .

C. SPECIAL PROVISIONS

§13

. . . . The works councils shall elect a chairman and a vice-chairman. They shall not both be workers or salaried employees if the council contains members of both groups.

§14

Election shall take place on a Sunday or a public holiday.

§15

Members shall be elected for one year beginning June 1. . . . . The councils in the individual establishments, the district councils, and the central councils shall be elected by the same ballot. . . . .

§16

The minister of posts shall issue more detailed provisions regarding electoral procedure after negotiation with the economic associations of the employees concerned. These will be in the nature of executive regulations supplementing the general regulations governing elections under the Works Council Act.

§17

At least the chairman (of each council) shall be employed at the seat of the council.

DOCUMENT NO. 8

DECISIONS OF THE PRUSSIAN SUPERIOR ADMINISTRATIVE COURT

In spite of the considerable amount of legislation on matters dealing with the civil service which we have shown so far, some of the most delicate points concerning the status of the civil servant under the constitution of 1919 have not been settled through legislation. The absence of all provisions or at best a dilatory compromise by contradictory formula has led to a judicial settlement, for the time being at least. It is at this point that the importance of the administrative courts as a final arbiter of controversies arising within the service itself becomes apparent. No discussion of the status of the German civil servant is therefore complete without showing by a few samples the rôle which these judicial agencies play in the adjustment of internal difficulties.

Perhaps the most controversial aspects of the status of the German civil servant are his right to strike and his right to belong to parties which aim at the forcible overthrow of the existing political order. Ever since the enactment of the new constitution which insured freedom of association in order to protect and develop conditions of labor and economic life for everyone and for all occupations (Article 159), the problem of the implications of these provisions for determining the status of civil servants has been a matter of extensive controversy, particularly since Article 130 (see Document No. 1) especially guaranteed this freedom of association to civil servants. The right to strike and the right to belong to revolutionary parties may both be said to be corollaries of the right of association.

The following decisions may illustrate the attitude of the Prussian superior administrative court (*Preussisches Oberverwaltungsgericht*) with regard to both these issues. At the same time they will offer the attentive reader a glimpse of the rôle of the administrative courts as a resort of appeal for the individual civil servant seeking the protection of his rights. But a decision of the national judicial court has been appended also to complete the argument on the right to strike while showing that matters are by this administrative procedure not necessarily taken out of the ordinary civil procedure.

a) Party Membership

1. *Art. 130 of the National Constitution not only guarantees freedom of their inner opinion to civil servants, but also the freedom to profess this political opinion as it is represented by a particular political party* (*Entscheidungen*, Vol. 77 [1923], pp. 493 ff. Extract from the reasons of the courts:

[Against several chairmen of parish councils (*Amtsvorsteher*) disciplinary proceedings had been instituted with the purpose of dismissing them from the service, because they openly professed themselves for the communist party whose aim is the forcible overthrow of the existing political order. . . . .]

. . . . The circumstance that a civil servant professes himself for a political party does not constitute by itself a violation or breach of the duties imposed upon him by his office, nor an example of undignified conduct inside or outside his office. This legal situation is clearly indicated by article 130, clause 2, of the constitution of August 11, 1919, which guarantees to all civil servants the freedom of political opinion. For when this provision speaks of the freedom of political opinion, it cannot mean that only that opinion is guaranteed which exists in his mind and does not become apparent to the outside world, since this opinion is free anyway and therefore the provision can only be understood to mean that freedom is guaranteed to each civil servant to profess himself publicly for a political creed as it may be represented by a particular political party. Accordingly, the disciplinary punishment of a civil servant because of the mere profession for a political party is excluded in all cases. A civil servant would commit disciplinary offense which might lead to dismissal from service only if he undertook to further by overt acts the achievement of the purpose of the party which is aiming at the forcible overthrow of the existing political order. . . . .

2. *The chairman of a parish council* (*Gemeindevorsteher*) *who becomes active for the United Communist party which aims at the forcible overthrow of the existing political order violates the duties of his office and shows himself unworthy of the respect, authority and confidence which his office requires* (Vol. 78 [1924], pp. 445 ff.):

. . . . the mere profession of a civil servant to adhere to a political party . . . . is in view of Article 130, clause 2, of the Constitution neither a violation of the duties imposed by his office, nor undignified behavior within or without the office. On the other hand . . . . activities of a civil servant on behalf of a party whose aim is the forcible overthrow of the existing political order is incompatible with the fulfilment of a public office. Whether even the mere membership is to be considered as such activity on behalf of the party need not be discussed in this case. . . . . However, the proved activity of the accused on behalf of the United Communist party of Germany can represent an act subject to disciplinary punishment only if it is certain that the United Communist party of Germany was working at that time for the forcible overthrow of the existing political order, and if this aim was known to the accused. Both these conditions exist. . . . . [Here follow quotations from the published principles and instructions of the Communist party which show that at the time under consideration the Communist party aimed at the forcible overthrow of the existing political order, and further show that this aim must have been known to the accused in view of his high position in the party organization.—Editor.]

If it is thus certain that the accused has been active on behalf of the United Communist party of Germany which as he knew aimed at the forcible overthrow of the existing political order, he has shown by his behavior outside the office that he is unworthy of the respect, authority, and confidence which his office requires; for the civil servant violates his duty to be faithful to the state if he becomes active even outside the office in destroying the state. He is to be punished therefore. . . . . The accused cannot be saved from this punishment by quitting the United Communist party of Germany. . . . . For the violation of his duties as chairman of a parish council, of which the accused is guilty on account of his activity on behalf of the United Communist party of Germany, cannot be extenuated by his leaving the party even though we were to assume in favor of the accused that his leaving, which occurred after disciplinary proceedings were instituted against him, was the result of a change in his inner conviction and not undertaken for the purpose of escaping disciplinary punishment. The penalty for the offense of the accused can only be dismissal from service, for nobody who has engaged in activities for the destruction of the commonwealth by force can be allowed to remain as a servant of the existing commonwealth.

b) The Right to Strike

1. Decision of the Prussian upper administrative court (*Entscheidungen des Preussischen Oberverwaltungsgerichts*) (Vol. 78 [1924], pp. 448 ff.):

. . . . "The accused admits that he has . . . . struck. He has thus severely violated his official duty; for a strike is incompatible with official position, since such position establishes a condition of service under public law. A right of civil servants to strike can therefore not be recognized. . . . . These statements are in accord with the decision of the national judicial court (*Reichsgericht*). . . . . The considerations there urged in the same way apply to civil servants of the states and communes and as in the case of national civil servants are not invalidated by the freedom of association guaranteed to officials by Article 130 and 159. . . . . The latter [freedom of association] does not contain the permission (*Befügnis*) to break the legal obligations created by the appointment. . . . . Even for the employee in private employment the constitutionally guaranteed freedom of association (Article 159) creates certainly no right to strike in the sense that the consequences of a refusal to work contrary to the contract should be excluded, particularly not the right of the employer to dismiss him immediately . . . . much less could the state or the communes . . . . be expected to continue a service relationship under public law with a civil servant who refuses by unilateral and unauthorized strike to fulfil the services incumbent upon him. There is the further difference that the legal consequences of such action like that of every other offense of the civil servant committed in the service must be pronounced according to the procedure provided in disciplinary law. It follows that the legal consequences of refusing service which will be inflicted upon the striking civil servant as a disciplinary penalty will usually be dismissal from service.

"If the court in this case did not inflict this heaviest disciplinary penalty (namely, dismissal from service) simply on the basis of such admitted refusal of the accused to perform his service, the only reason was that the possibility of an error in law must be conceded to the accused. In March, 1921, at the time the accused committed the offense, the legal question connected with the strike of civil servants was very controversial. . . . .

"The penalty of dismissal from service must be inflicted upon the accused because his refusal to perform his service by striking was attended by particularly aggravating circumstances which go beyond the simple refusal to obey and to work, and they constitute a very serious violation of his official duty. For the refusal of the accused to perform his service was not an economic strike for the purpose of securing better working conditions, but constituted a participation in a general strike of a political nature. This general strike was according to the accused's own statements ordered by the German Communist party 'in order to show sympathy with the workers of Central Germany engaged in a defensive struggle.' . . . . The accused has actively shown his political opinion by his participation in the general strike ordered by the Communist party, of which he is a member and chairman in the local ward E. According to all previous decisions of the superior administrative court (*Oberverwaltungsgericht*), the mere adherence of a civil servant to a political party does not, in view of Article 130, clause 2, constitute either a violation of the duties imposed upon such a civil servant by his office, nor undignified conduct, even if the party concerned has for its purpose the forcible overturn of the existing political order. The freedom of political opinion guaranteed by the constitutional clause just quoted contains no limitation with reference to unconstitutional purposes or means. On the other hand, it must be maintained that the direct participation in activities which attempt to realize the purposes of a political party by illegal means is incompatible with filling a public office. Between these two forms of showing one's opinions many grades of political activity can be imagined which go beyond a mere profession for the principles of a party, without representing a direct participation in illegal acts. Such activities extend from the joining of a party and a payment of the usual dues to demagogic agitation and the holding of a leading party position. To what extent such activities in favor of a party which works toward the forcible overturn of the existing political order violate the official duties or the requirements which are to be made upon a civil servant outside the service will have to be decided in each case. . . . . "

[Here follows evidence to show that the Communist party is a party aiming at the overthrow of the existing political order and furthermore that the particular activities for which the accused expressed his sympathies by striking consisted partly in armed resistance to the constitutional established government, a fact which was known to the accused.] "The accused . . . . has knowingly supported and furthered armed revolt against the government in whose direct service he was as a communal officer. It is not possible to divide his conduct according to the point of view urged by himself according to which he did not approve of the armed disorders but sympathized with the whole conduct of the workers. His official duty required him to abstain from any participation in an armed revolt against the commonwealth, even a purely auxiliary one. The accused has placed the personal, political, and party interest above the interest of the commonwealth and the general welfare, although his official duty required of him as a servant of the community (Article 130, clause 1) the reverse conduct. . . . .

"The extremely serious offense with which the accused has to be charged required his removal from the service, particularly since the conduct of the accused rests, according to the impression of the court, upon an inner conviction which continues to exist. It would lead in the future under similar circumstances to new, serious violations of the order of the service. . . . . "

2. Decision of the National Judicial Court in Criminal Matters (*Entscheidungen des Reichsgerichts in Strafsachen*, Vol. 56 [1922], pp. 412 ff.):

" . . . . As the first clause [of the first paragraph of the presidential ordinance above cf. (*a*).—EDITOR] presupposes, the existing civil service laws do not in fact grant to civil servants the right to strike. The National Civil Service Act (cf. Document No. 2) . . . . which together with the constitutional provisions (cf. Document No. 1) constitutes the foundation for the legal aspects of the service relationship, prescribes in §2 that the national civil servants . . . . are supposed to be appointed for life. This act further provides in §10 that every national civil servant is obliged to take care of the office intrusted to him according to the constitution and the laws. A right to discontinue the fulfilment of the official duties without the permission of his superiors is nowhere conceded to the civil servant in the said act; on the contrary, in §14, clause 3, a civil servant is declared to be liable to forfeiture of his salary if he absents himself from the office without the prescribed leave of absence. . . . . Furthermore §72 says: 'A civil servant who violates the duties incumbent upon him commits an offense and is subject to disciplinary punishment.' This paragraph pronounces a prohibition against the suspension or the refusal of work. . . . .

"The beginning as well as the ending of the official relationship is found upon a sovereign act of the appointing authority. Just as the consent of the appointee is necessary in order that the appointment may come into force, although the appointment itself is a free act of the political authority, in the same way the petition of the civil servant is a condition for the discharge. But the civil servant cannot dissolve the official relationship unilaterally by a notice whether with or without time allowance. The civil servant is obliged to fulfil all duties of the service even in those cases in which he has a right to demand his discharge. According to this principle, the civil servants are not in a position to bring about by a unilateral dissolution of the official relationship a situation in which they have a right to lay down or to refuse to do the work incumbent upon them.

During the continuance of the official relationship, §10 of the National Civil Service Law forbids any unilateral suspension or refusal of work. The special condition of authority under public law imposes upon the civil servant a special duty of obedience, loyalty, and service. This duty is different from the duties of those employed by contract under private law, as is partly apparent from the fact that he is pledged by oath to fulfil all duties of the office intrusted to him. As servant of the whole community (Art. 130 of the constitution) the civil servant has to place all his strength at the disposal of the commonwealth for the purpose of furthering and accomplishing the public tasks, as long as he is able to do so. He has to attend to his office conscientiously according to the constitution and the laws. He must not refuse to carry out the legal commands of his superior authority.

. . . .

" . . . . Article 159 [of the constitution] leaves open the question as to which means may be employed in order to accomplish the protected ends [of economic associations]. The . . . . conclusion that the freedom of association guaranteed to all callings and therefore also to the civil servants by Article 159 . . . . does not include the right to strike is confirmed by the fact that the reporter of this article declared in the plenary session of the National Assembly of July 21, 1919, ... that the recognition of the freedom of economic and social association for everybody would not constitute constitutionally the so-called 'freedom to strike.' This statement of the reporter was not contradicted by anyone. . . . .

"Consequently the national constitution has not altered the former condition under which the civil servants had no right to discontinue or refuse the work incumbent upon them. . . . .

"The national government has always taken the same position up to the present time. It is not possible to point to the proclamation of the national government of March 13, 1920, in which the government called a general strike of the entire population; for in so far as it addressed itself to the national civil servants, it released them from the duty of service. As the highest authority in the service it was entitled to do this."

[The rest of the decision concerns other points.]

DOCUMENT NO. 9

THE GERMAN FEDERATION OF CIVIL SERVANTS

The complex associational life of the civil servants of Germany, like that of other countries, is a development of the last fifty years. It begins to take national form with the foundation of the union of school teachers (*Lehrerverein*) in 1871. Hampered considerably by governmental interference under the empire, the consolidation of this and various later associations into a national German federation of civil servants (*Deutscher Beamtenbund*—DBB) is, however, of recent date. It occurred in the wake of the revolution, on December 4, 1918, after all restrictions formerly imposed upon tendencies to introduce the trade-union idea into the ranks of the millions of German civil servants had been removed. The necessity of bringing together and of representing adequately the common interests of all civil servants under a popular government became at once so apparent that the federation (DBB) has been able to unite under its banner the large majority of organized German civil servants. For a time there were serious difficulties with the general federation of German trade unions which wished to see trade unions of the civil servants organized with the express acceptance of the strike as a means for attaining their ends. This the federation (DBB) has refused to do, and a comparatively small group has stayed away. But as we have seen, the federation (DBB) has the courts on its side (cf. Document No. 5), since the constitutionality of a strike by civil servants has been denied.

a) PROCLAMATION OF THE LEADERS OF THE FEDERATION

Under the new popular government no trade or profession can leave unfulfilled the task of educating its members politically. . . .

This political education cannot be achieved by words and theories, unless they are followed by action. Political action involves a frank confession (of one's opinion). . . . Without knowledge about politics there cannot be political judgment. Not only the party, but the trade organization is called upon to make such knowledge available to the individual. The member of a given trade or profession ought to be equipped with the necessary information by his trade organization. . . . . The first principle of trade organizations in making such knowledge and information available must be strict neutrality (in matters of general politics).

The trade organization ought never to attempt to distort the facts in favor of a particular party. It must approach them with the attitude of a scientist.

The political self-determination of the individual must remain untouched. Everyone ought to determine and to be responsible himself for the political party to which his convictions lead him. In a popular state each political opinion should be allowed (to exist). . . . . Any trade union of the civil servants ought to preserve unconditional political neutrality.

One often encounters among civil servants the idea that this question could be avoided by creating a special party for the civil servants. . . . . This idea leads astray, because it does not consider that the modern movement in the civil service aims at bringing the civil service and the people nearer to each other rather than at isolating the service. Therefore, only the complete harmonizing of the special demands of the civil servants with the general policies of the government in power can be the basis of any political activity of civil servants.

It is very necessary for the civil servants to dissolve the hostility which exists against them among the rest of the people. The creation of a separate party would only strengthen the opposition. . . . .

For these several reasons the leaders of the German federation of civil servants reject the idea of founding a separate party of civil servants. On the other hand, it will leave no means untried to secure the representation of the demands of the civil servants in the parliaments by representatives elected by the civil servants themselves. The directors of the German federation of civil servants have suggested a number of civil service representatives (cf. also Document No. 1, Article 39) to the several parties, to be elected to the National Constitutent Assembly. The German federation of civil servants will use every opportunity to back such representatives. . . . .

The directors of the DBB cannot solve this difficult task alone and without the co-operation of the associations united within the DBB. It asks all connected associations to take the necessary steps, working along the following lines:

1. The several associations shall induce their members to join one of the political parties immediately, the choice being left to the members.

2. Special civil service committees shall be constituted in the local and provincial party organizations. These shall get into close contact with the civil service committees which are to be created in the central headquarters of each party.

3. Every local and provincial running of candidates of the civil servants

shall be done in co-operation with the civil service committees of the central headquarters of the respective parties.

4. All measures shall be regulated uniformly as far as possible by co-operation between the local, provincial, and central civil service committees.

. . . .

In order that the aforesaid suggestions may receive the indispensable uniform treatment within the general movement of the civil servants, the directors of the DBB shall create a committee on political affairs as soon as possible. This committee will begin its work early enough so as to prepare adequately the election of an appropriate number of representatives of the civil servants to the parliaments of the commonwealth and the states. . . . . The committee on political affairs of the DBB will undertake all its measures in direct co-operation with the civil service committees of the central headquarters of the several parties. It will have the duty to prepare a basic program of policies for the servants. . . . .

b) EXTRACTS FROM THE CONSTITUTION OF THE GERMAN FEDERATION OF CIVIL SERVANTS

§1

1. The German federation of civil servants (DBB) is the Federation of the several organizations of German civil servants. It is built on trade union principles.

2. The seat of the DBB is Berlin.

§2

1. The DBB has the purpose of protecting and furthering the legal, economic, and professional interests of the group of persons organized in the member associations, maintaining, however, strict neutrality in matters of party politics and religion.

2. The federation will use all trade unionist means in order to accomplish its purposes.

§3

1. The following associations can become members of the federation:

a) Trade unions or federations of trade unions of the national civil servants and of civil servants in the German railway company.

b) State federations (cf. § 8, clause 3), as well as trade unions and federations of trade unions of policemen even though they do not fall under (*c*).

c) Trade unions and federations of trade unions of civil servants of the communes, federations of communes, and other communal corporations.

d) Trade unions and federations of trade unions of school teachers.

. . . .

§5

1. Each member of the federation (DBB) is obliged:
a) To observe the constitution and by-laws and all resolutions . . . . framed according to them.
b) To work for the interests and the expansion of the federation. . . .
c) To publish the proclamations of the federation in its professional journal and in those of its component associations. . . .
d) To send its annual report to the Federation (DBB).

. . . .

2. Each member of the federation is obliged to send the agenda of the regular and of the extra-sessions of its representatives to the federation. The federation has the right to send its own representative (to such meetings). This representative may take the floor outside of the list of speakers.

§7

1. The members of the federation regulate their matters independently, in so far as they do not belong to the competency of the federation.

2. The members of the federation and their component associations ought to support each other in representing the interests of their members.

§8

1. Each civil servant shall, as a matter of principle, be a member of only one trade union. National civil servants, state civil servants, communal civil servants, and teachers shall organize in respective trade unions.

. . . .

2. The organization of the federation shall in the main follow the several spheres of authority: commonwealth, state, commune. With this in view the representation in the organs of the federation shall be regulated by forming more or less general groups of representation (so-called "columns").

3. All civil servants subject to one state shall be gathered into one organization. . . . .

[The remainder of the constitution deals with the internal organization which presents no unusual features. It resembles the structure of the American Federation of Labor. There is a biennial meeting-at-large of about two hundred representatives, a board of overseers of ninety-two, an executive board of thirty, and finally a secretariat with a chairman and ten members.]

c) PRINCIPLES OF THE GERMAN FEDERATION OF CIVIL SERVANTS

1. The DBB wants first of all to consolidate all German civil servants. It is its primary duty according to its constitution to represent the interests of civil servants in the widest sense. As the central trade union of the civil servants it can co-operate with the trade unions of the workers and of the salaried employees in all general questions concerning employees and consumers.

2. The DBB represents the interests which are common to all civil servants. (The member associations of the federation regulate their affairs independently in so far as they do not belong to the competency of the DBB.)

. . . .

3. If the DBB has undertaken the representation of a certain demand or interest, either on the basis of its constitution or on account of a special resolution of its organs, the member associations must refrain from all independent action.

4. The member associations of the DBB shall include all civil servants within one administrative unit (like the railroads, posts, other national administrative authorities, state administrations, communal administrations, teachers) as individual members, if necessary by organizing professional subgroups.

5. Since each civil servant shall belong only to one trade union, double counting must not occur.

6. Trade unions which are members either entirely or in part of another type of trade-union organization must not belong to the DBB.

7. Organizations of civil servants which are considered competitors of present members may not be accepted as members.

d) PROGRAM OF THE GERMAN FEDERATION OF CIVIL SERVANTS

I. LAW AND CONSTITUTION

The German federation of civil servants accepts the established republican constitution of the German commonwealth as its basis. It is prepared to defend this constitution against every violation by force with all means available to this federation.

It requests the maintenance of the civil liberty and equality guaranteed to the civil servants by the constitution and other laws.

II. CIVIL SERVICE LEGISLATION

The German federation of civil servants requests that professional civil service under public law be maintained. The duties toward the common welfare which the entry into the official relationship entails necessitate specific safeguards for the position of the civil servant. These are on the whole given by the fundamental rights of civil servants guaranteed in the constitution. They must remain intact.

Civil service legislation should be developed with the co-operation of the organizations of civil servants. It should be done according to the spirit of the time, that is, liberally and socially as well as uniformly for all civil servants.

The Civil service committees guaranteed to civil servants in Article 130 of the constitution must correspond with the demands of the civil servants themselves, as far as codetermination, participation, and arbitration are concerned. No restrictions of the freedom of association guaranteed by the constitution will be suffered.

III. SALARIES OF CIVIL SERVANTS

The salaries of civil servants should be graded according to their service. . . . .

The classification of salaries should start from a minimum salary of the civil servants of lowest rank. This minimum salary should correspond to the purchasing power of money. The minimum salary to be demanded is an amount which guarantees full ability to work and to enjoy the work.

IV. ECONOMIC POLICIES

The German federation of civil servants stands for the principle that the common welfare has to take precedence over private interests. This is nothing but the political expression of the fact that the civil servant is constitutionally the servant of the whole people. Its decision in individual cases is determined by the economic position of the civil servants as employees and consumers.

The German federation of civil servants demands that the governmental economic policies tend toward a just equalization of the social interests, and protection for human labor as far as possible. . . . .

V. ECONOMIC SELF-HELP

The German federation of civil servants will develop economic self-help of the civil servants (co-operative associations) and will not allow any restrictions of their right to do so.

VI. CONSOLIDATION OF THE ENTIRE BODY OF CIVIL SERVANTS: CO-OPERATION WITH THE TRADE UNIONS OF WORKERS AND SALARIED EMPLOYEES

Upon the basis of these policies the German federation of civil servants will consolidate the entire body of German civil servants, maintaining always complete neutrality in matters of religion and party politics. It is ready . . . . to co-operate with other central federations of trade unions upon this basis.

DOCUMENT NO. 10

CIVIL SERVICE ACADEMIES

A noteworthy development within the German civil service under the new order has been the organization of civil service academies, the first one at Berlin. These academies owe their creation entirely to the initiative of the associations of civil servants, although they are now supported fairly liberally by the government. They have been of great value in helping the members of the higher service to acquire the additional knowledge of constitutional law, economics, and so forth, which the new order demands for effective participation in the government. They materially assist the aspirations of the middle group of civil servants for entry into the higher service. Such academies are now located in Berlin, Breslau, Dresden, Düsseldorf, Hanover, Königsberg, Leipzig, Munich, Münster, and Weimar.

The following documents are selected with a view to indicating the general nature of the development. Space does not allow the reprinting of a typical course offering in these academies except in extract form. The largest of these academies, Berlin, publishes a *Jahrbuch* which contains a great deal of valuable information on special developments. There are also two memorial volumes, *Aufgaben, Wege und Ziele der deutschen Beamtenhochschulen* and *verwaltungsprobleme der Gegenwart*, published in 1924 and 1929, respectively, by the Berlin academy.

a) A Letter from the Minister of Transportation

To the Civil Service Academy

In principle, I am inclined to consider the possession of a degree from a civil service academy favorably if it is a matter of coming to a decision as to the qualification of a civil servant for an especially high position. I should like, however, to submit for your consideration whether, because of the changed position of the German railroad, it is not necessary to develop your courses of instruction with regard to commercial economics. I propose further that members of the civil service be given the opportunity to get a degree, ... especially on the basis of successfully completing specialized courses at the civil service academy. It would be worth while to hasten as much as practicable the measures being taken in this connection, so that in elaborating the new careers for the advanced non-technical and technical service, a provision as desired by you may be included.[1]

THE NATIONAL MINISTER OF TRANSPORTATION

b) A STATEMENT OF THE PURPOSE OF THE CIVIL SERVICE ACADEMY BY THE PRESIDENT OF THE CIVIL SERVICE ACADEMY AT BERLIN

The purpose of the civil service academy is to continue the general and expert training of civil servants. The academies have several primary aims:

To give a comprehensive education to those civil servants who have not received a university training but who possess an expert knowledge acquired by practical work and experience, and thus to qualify them for the increased demands of the new order, to enable them to fulfil bigger tasks independently and to rise in the service.

To offer civil servants with a university training the opportunity for increasing their expert knowledge.

To round out the general education of the civil servants, particularly concerning civil, economic, and social problems.

The academies pursue their aims in uniform co-operation with the national, state, and local government authorities.

. . . .

The origin of civil service academies is due to the initiative of the large organizations of civil servants. Permanent civil servants created them, and they are intended for permanent civil servants.

. . . .

The civil service academies are to a large extent supported by organizations of the members of the middle service. . . . . Members of the lower service are also frequently found in their classrooms, and members of the higher service are taking an interest in happily increasing numbers. This fact proves that the organization of the civil service academies is elastic enough to meet the needs for further education of the entire civil service, even though perhaps not to the same extent.

The civil service academies do not exist to satisfy the desire for general culture, and for that reason they interfere in no way with the admirable activities of the adult education schools. They have also nothing to do with the preparatory training of civil servants, and thus do not involve in any way competition with the universities and other institutions of a similar sort. As a matter of fact, they emphasize the boundary line sharply so that they not only have gained complete understanding and honorable recognition from the universities, but most valuable support both materially and personally. The decisive distinction between the two institutions and their activity consists in the fact that the university prepares young people for entering a profession . . . . , while the civil service academy is concerned with mature persons who have succeeded to some extent in their profession, and who approach the material offered them with the expert criticism which they have acquired by experience. The body of students is therefore completely different, with the result that the teaching methods also must be entirely different. . . . The various subject matters have to be treated differently, as far as their relation to theory and practice is concerned. . . . .

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[1] In the meantime, such a provision concerning further education at the civil service academies and concerning the value of course records at the academies has been included in the draft of the new careers within the service of the German railway company.

. . . . That this training, which should be and is scientific, is of particular importance for civil servants of the middle service has its special reasons.

. . . . It is a fact, which was often conceded under the old régime, but which is now generally recognized, that the possibilities of the middle service were not valued and used to its full extent under the old system. Members of the middle service were excluded as a matter of principle from the higher service. Their sphere of competence did not in many cases correspond to what they were able to accomplish. As a matter of fact, they frequently performed work which belonged to the competence of the higher officials and which was for that reason signed and formally supported by such higher officials. This may often have served to satisfy their ambition to assume greater responsibilities. But it can hardly have satisfied them entirely. . . . .

At present these limitations have been done away with to a considerable extent. The entire career is open to able persons. Numerous activities which had formerly been reserved for the higher service are being transferred to members of the middle service. The problem at present is to develop the prerequisites for furthering this process, to increase the ability of the middle service to such an extent that they are sufficiently skilled for their new tasks. Here the civil service academies come in; and for that reason . . . . their value for the middle service is especially great.

c) List of Lectures for the Year 1924–25

LECTURE	INSTRUCTOR
A. General Lecture Courses:	
I. Political Science and Economics:	
Theoretical Political Economy	Eucken
Practical Economy, Part II (Social Problems)	Boese
Finance	Jastrow
Budget Law in Reich, State, and Community	Fritz
Business Economics	Nicklisch
Accounting	Siche

II. LAW

Civil Law I	Lucas
Civil Law II	Volkmar
Civil Law III	Lucas
Civil Law IV	Volkmar
Commercial Law, Part I	Hülsen
Commercial Law, Part II	Hülsen
Municipal Law, with the Exclusion of General Municipal Constitutional Law	Von Dultzig
Administrative Law, Special Part	Von Dultzig
Administrative Law, General Course	Lassar
Criminal Law	Kohlrausch
Labor Law	Kaskel
Industrial Law	Kaskel
Social Insurance Law	Dersch
Police Law	Drews
The Prussian Police in Comparison with Foreign Police Organizations	Abegg
Political Police	Weiss
General Taxation, Including the National Tax Law	Zarden
Principles of Distraint and Bankruptcy	Armstroff
Criminal Procedure	Kiesow

III. International Relations, Including History and Politics:

The European State System	Hoetzsch
The Internal Development of the Great Powers in the Last Fifty Years	Hoetzsch
Political Questions of the Present	Bergsträsser
Politics, Selected Topics	Bergsträsser
The World-Trade and Commercial Routes in the Twentieth Century	Schneider
Problems of Cultural Propaganda	Heilbron
Significance of the Development of the Reparations Question	Simon
Foundations of the English Economic System	Hemmen
The Financial System of the Great Powers	Schneider
The World News System	Schneider
The Economic System of the United States of America	Davidsen

IV. General:

History and Significance of the Modern Newspaper	Manz
Introduction to Psychology	Wertheimer

B. Special Courses:

I. Municipal:

Self-government Reform in Prussia	Sembritzki
The Present Law of Tenancy	Brumby

The Future of Municipal Finance	Mulert
Questions of Municipal Politics	Augustin
Problems of Organization for Municipal Activities	Riess
Municipal Finance, Including Taxation	Kaufmann

II. Social:

General Welfare Work	Muthesius
Social Hygiene	Grotjann
Social Ethics	Weber

III. Railroad:

Traffic Questions	Weirauch
New Developments in Electrical Road Management	Wechmann
Questions of Economy in Management	Tecklenburg
Labor Law	Fromm
Modern Statistics	Steurnagel
Financial and Economic Management of the National Railways	Homberger
Administrative and Legal Questions of the National Railways	Kittel
Personnel Problems of the National Railways	Roser

IV. Postal and Telegraph:

Science of Postal Finance	Andersch
Selections from Civil Service Law	Triloff
The Postal Balance Sheet	Gebbe
Innovations in Radio Technique	Leithäuser
Postal Qualification Examinations	Klutke
Current Questions of Postal and Telegraph Law	Schneider

VI. Banking:

What Is the Science of Banking and What Object Is It To Serve	Motschmann
Discount and Credit Policy of the Reichsbank, Part I	Kleine-Natrop
The Theory and Practice of Currency	Müller

C. Seminars:

Exercises in Political Economy	Boese
Cases in Public Finance	Euteneuer
Budget, Cash, and Accounting Practice	Buchholtz
Civil Law (Advanced)	Volkmar
Exercises in Management, Especially Office Organization	Nicklisch Hummel
Constitutional and Administrative Law	Anders
Municipal Law	Augustin Müller

Welfare Law	Muthesius
Social Insurance (Practical Cases)	Dersch
Postal Law	Schneider
Tax Law	Pissel Weltzien
Criminal Law and Criminal Procedure	Kiesow

ENTIRE NUMBER OF HOURS

Winter semester, 1924–25	702
Summer semester, 1925	395

THE AUSTRIAN CIVIL SERVICE

LUDWIG MAIER, Ph.D.
Secretary, International Postal, Telephone, and Telegraph Association

INTRODUCTION[1]

The law distinguishes federal employees (officials), employees by contract, and (state) workers. Federal employees are full-time public officials. Their appointments are regulated by law and they have an indeterminate tenure of office.[2]

No special positions are set aside for the exclusive employment of employees by contract. Their appointments are regulated by enactments. Generally, they are employed as substitutes in the event of sickness and leave of absence or as a permanent reserve force for federal employees. From their ranks federal employees are recruited. There is, one must admit, a tendency on the part of executive departments to increase the number of employees by contract at the expense of the number of federal employees.

State workers are employed in state monopolies. The most important are: tobacco factories, salt-works, federal forests, the state printing office, telegraph construction, and automobile works. Their employment is regulated by means of collective agreements. Terms of employment are fixed in the so-called "work regulations." These differ from one monopoly to another.

Until October 1, 1922, railroad employees were classified as federal employees. They ceased to be federal employees, however, when the federal railroads became independent. Since that time they have gone their own way in every respect.

The following pages deal exclusively with federal employees (officials, in the narrower sense).

CIVIL SERVICE LAW

The civil service law now in force is contained, in general, in the so-called *Dienstpragmatik* (January 25, 1914), a statute governing the employment of public officials and employees.

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[1] [From this introduction has been omitted a section dealing with the Austrian pension system.—EDITOR.]

[2] Translation by Dorothy Fahs, University of Chicago.

Many provisions of this statute have been changed and repealed through subsequent legislation. There have been repealed (1) those sections which are monarchical in their character (through the federal constitution); (2) those sections which deal with salaries of officials (through the statute concerning salaries); and (3) the entire second main section which deals with employees (also through the statute concerning salaries, which does not recognize any difference between "official" and "employee").

A copy of this statute, as far as it still is valid, is appended.

After 1914 the only other legal codification of civil service regulations is to be found in the federal constitution of October 1, 1920.

The principal intent of the constitution, as far as civil service is concerned, is to forecast the advent of a uniform civil service law, which, according to all appearances, will take place in the dim and distant future (Art. 21).

Of especial importance is Article 7 of the constitution. It reads:

> All Austrian citizens are equal before the law. Privileges, based upon birth, sex, rank, class, or religious belief are abolished.
>
> Unimpaired exercise of their political rights is vouchsafed. All public employees, including the members of the federal army, shall be guaranteed the unrestricted exercise of their political rights.[1]

There is, furthermore, provided in Article 21 the creation of a board representing the interests of all public officials. A bill to this effect was submitted, but was rejected by both the administration and the officials.

There is a board representing the personnel of the postal and telegraph departments. The constituents elect this board by means of secret and direct ballot. The voting is done on a footing of equality. All matters concerning service and salaries of postal and telegraph officials and employees must be submitted to this board. In the event of disagreement between personnel and administration, the council of ministers must decide. The board representing the postal and telegraph personnel was established by executive order.

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[1] Howard L. McBain, and Lindsay Rogers, *The New Constitutions of Europe.*

SALARIES

Salaries of officials are regulated in the *Gehaltsgesetz* (statute concerning salaries) of July 18, 1924. Since that time, changes have been made nearly every year. The last available scale of salaries is contained in an enactment, dated May 4, 1928. Only the first sections, appended herewith, are of general interest.

In addition to this statute there is one of December 7, 1928, governing bonuses for officials. According to this statute, all officials in active service and all pensioned officials are to be paid twice a year (June 1 and December 1) 15 per cent of their salaries on each date. This statute resulted from a demand on the part of officials for a thirteenth monthly salary payment.

The salaries of officials are still in the course of evolution. It may safely be predicted that salaries will again be increased in the years 1929 and 1930.

HEALTH INSURANCE

Health insurance for federal employees is regulated by statute of July 13, 1920. Since this time there have been a number of supplementary laws. Health insurance is obligatory for all officials and their dependents (wife and children). The compulsory contribution is equal to 1.5 per cent of the salary, but only up to a monthly salary of 600 schillings. The state contributes the same amounts.

The insured may claim services of physicians, dentists, and medical specialists, treatment in sanatoriums, monetary assistance during pregnancy, bonuses for nursing mothers, etc. The administration is by a joint committee.

LEAVES

Leaves are regulated by decrees, passed by the council of ministers. The decree passed May 25, 1925, has been renewed repeatedly.

The vacation limit is raised to five weeks in the case of higher officials.

WORKERS' AND EMPLOYEES' CHAMBER

By statute of February 26, 1920, there was created a workers' and employees' chamber. Its function is to represent the best interests of workers and employees, including employees of the department of communication. It has the same powers as the chamber of commerce and trade, especially the privilege of expressing its opinion on every bill.

This chamber consists of sections. One of these sections is the communication section, comprising the employees of the postal, telephone, and telegraph departments.

OTHER MATTERS CONCERNING CIVIL SERVICE EMPLOYEES

Some matters concerning civil service employees are not fully treated in the preceding paragraphs. A number of enactments, derived from laws treated above, could not be dealt with. The most important are: an ordinance concerning official titles (July 2, 1926); a regulation governing travel allowances (October 21, 1926); requirements to be met by candidates for appointments (March 18, 1927); enactments concerning various kinds of additional earnings (nightwork, overtime, travel escort, etc.).

SOURCES

There is no comprehensive scientific treatment of civil service laws, nor is such a treatment desirable at the present time, since considerable changes are taking place continuously.

Scientific treatises are found occasionally in current issues of *Zeitschrift für Verwaltung*, Vienna, published by Perles, and of *Zeitschrift für öffentliches Recht*, Vienna and Berlin, published by J. Springer.

A number of successful attempts have been made to treat comprehensively Austrian public law in its entirety, the latest and most valuable being *Grundriss des österreichischen Staatsrechts* by Dr. Ludwig Adamovich (Vienna, 1927, Austrian State Printing Office).

The best available edition of the *Dienstpragmatik* (many provisions of which, to be sure, are out of date) is the one made by Count Pace, Vienna, 1914, published by Manz. This edition contains an interesting historical introduction.

AUSTRIAN DIENSTPRAGMATIK, 1914

Division I. General Regulations

APPOINTMENT

1. Only those may be appointed as officials who are Austrian citizens, who have an honorable record, who possess the full qualifications for the fulfilment of the obligations of the post, and whose competence is restricted in no other way than by failure to meet the age requirements.

For the appointment of a minor the consent of the legal guardian is required.

The special requirements for appointment are determined in accordance with the regulations of the separate departments for various branches of the service.

Persons involved in bankruptcy proceedings are excluded from appointment and their exclusion continues as long as such proceedings are in progress.

2. The consent of the central office is required for appointment, if the applicant, (1) has not reached his eighteenth year; (2) is past his fortieth year and has not already been in the civil service; (3) has been convicted of a crime or a misdemeanor, or of some violation arising from a spirit of greed, or of a transgression against public morality; (4) has been discharged from the civil service or has resigned during disciplinary proceedings.

3. The appointment of an official is allowed only with the permission of the central office in case he would thereby become supervisor of, or subordinate to, another official with whom he is related by reason of direct or indirect descent, parentage, marriage, or adoption.

4. If it is discovered afterward that an official has obtained his position surreptitiously through the presentation of false documents, or through the concealment of circumstances which according to the current regulations would exclude him from office, disciplinary proceedings are to be started against him.

5. In so far as a preparatory period of service is required for appointment according to the current statutes, the regulations in regard to appointment in general are correspondingly applicable to the admission to preparatory service.

6. A decree must be issued in regard to each appointment in which the title of the office and the salary to be received are stated.

If an official is appointed only temporarily, his appointment is to be noted as such in the decree.

A decree must also be issued in regard to each case of permission to enter preparatory service.

The civil service relationship becomes effective on the day of delivery of the decree of appointment, in case no other day is specifically named in the contract.

The service begins on the day named in the decree and when no day is given should begin within fourteen days after the delivery of the decree. In case of postponement the appointment is invalid if no satisfactory excuse has been offered for the delay within a further period of fourteen days.

. . . .

8. Relationship by blood, marriage, or adoption, such as described in Article 3, may not exist between the officials of any office intrusted with the production of money or materials or with the counting of the same, nor between officials of an accounting department, nor between these and the officials of the treasuries assigned to their control, nor between these and accounting offices.

In all other cases due precautions must also be taken to see that the interests of the service are not endangered through a relationship of this sort.

COMMENCEMENT OF SERVICE

9. In case of a new appointment or a reappointment the period of service in the sense of this law begins with the day of the actual beginning of service; in case of the direct transfer from another civil service position on the day of dismissal therefrom.

Commencement of temporary service is to be taken as the beginning of the period of service, if the temporary service in accordance with Article 61 can be counted in the calculation of a pension.

The official must present his decree of appointment to the officers of the appropriate authority within fourteen days after commencing service; the latter are responsible for making note of the date of the beginning of the period of service on his occupational record card.

THE OATH OF OFFICE AND THE PROMISE OF FULFILMENT OF DUTY

12. Upon entering into the definite civil service relationship, the official must take the oath of office on the hands of the officers of the bureau or of some official commissioned by them.

The oath is to be signed by the person taking it after the date of taking has been noted on the same. The taking of the oath is to be officially verified on the decree of appointment together with a statement of the day thereof.

The cases in which formerly the oath of office was taken on the hands of the kaiser remain untouched.

Officials who are temporarily appointed or who hold positions for their practical period of training must promise to fulfil the duties of office; the requirements in regard to the oath of office are likewise applicable in so far as they are pertinent.

OCCUPATIONAL RECORD CARD

13. An occupational record card is kept by the authorities for each official, on which is to be kept a record of all personal data important for the civil service relationship in general and especially for advancement to higher positions and for calculation of pensions.

The official gives this date directly after his entrance into service as well as all changes.

The official has a right to see his own record card and to make a copy of it.

QUALIFICATIONS

14. Annual qualification records in regard to officials who are eligible to promotion must be kept up currently.

The detailed regulations are handled by special statutes.

15. Rating commissions are to be established: (*a*) at the central offices; (*b*) at the offices of those authorities directly subordinate to a central office.

If no rating commission can be established in the office of an authority directly subordinate to a central office, then the director of the central office is to assign the ratings to another rating commission.

The minister of justice determines for his judicial district those authorities for whom rating commissions are to be established.

16. The commissions consist of five members.

The regular members of the commission as well as the necessary number of substitutes are appointed by the officers of the body in which the commission is established.

The chair in the commission is held by the regular member oldest in term of office.

An absolute majority is sufficient to pass a resolution.

If the commission is considering the fixing of the qualifications for specialists in the civil service and if no special rating commission has been established for fixing qualifications in this branch of service, the department director or an advanced specialist replaces the regular member lowest in rank and is given the right to vote.

In a case such as mentioned in Article 15, Paragraph 2, the director of the central office may arrange that one or two officials of this authority be introduced in the rating commissions as special members in place of the two regular members lowest in rank, and that they be given the right to vote.

17. Those officials who are not under the direct supervision of the director of the bodies in which a rating commission has been established are to be subject to the office or director immediately above them, who shall formulate the rules for this group corresponding to the regulations as given in Article 19. These rules are to be turned over officially to the commission.

Such attached offices are entitled to give their opinion in regard to any section of these rules, and in case of differences of opinion to state their reasons.

18. The commission determines the qualifications, so far as supported by descriptive statements, after weighing the same.

The personnel director as well as those officials intrusted with the regular inspection of the offices, in so far as they do not already belong to the commission, are to be included in the sittings of the commission in the capacity of advisers.

In case the commissions consider supplementary explanations advantageous, then another official may be called in to give information.

19. In the decisions as to ratings the following are to be taken into account: (1) technical education (knowledge of the regulations necessary to the fulfilment of his office; (2) ability and apprehension; (3) industry, conscientiousness, and reliability in the fulfilment of duty; (4) aptitude for meeting persons and dealing with the public; (5) knowledge of language; (6) success in the application of it; (7) behavior; (8) in cases in which the official is found in a position of leadership or in which the placement of one in such a position is under consideration, his qualification for such a position.

Special circumstances decisive in a particular case are specifically to be taken into account.

The final judgment must be expressed in one of the following terms: "excellent," "very good," "good," "less fitted," and "not fitted."

All officials designated to take part in proceedings in regard to ratings must observe strict impartiality in the execution of their functions. The rating commission must strive toward the greatest possible impartiality in the rating of officials.

20. The official is to be informed of the final rating.

He has a right to see his record card both as to individual points and as to final rating, and has a right to a copy of the same.

If the final judgment is not at least "good," then the official has the right to appeal within a period of four weeks to the competent authority; the rating commission passes judgment in regard to these complaints.

Division II. Duties

GENERAL DUTIES

21. The official is bound to observe inviolably the state constitution as well as the other laws. He is to apply himself with full energy and zeal to the service and to fulfil the duties of his office conscientiously, impartially, and unselfishly, is to consider at all times the preservation of the public interest as well as to prevent and restrain, in so far as he is able, all that might be injurious to the same or disturb the orderly process of administration.

OBEDIENCE IN OFFICE

22. The official is under obligation to obey the rules set by his superior and to be as careful as his knowledge and power permit in protecting the interests of the civil service intrusted to him.

If important considerations of the service make it necessary, the official must upon instruction from his superior temporarily work overtime in the office of the authority with which he is employed or in the offices of other state authorities, and also perform other official duties which are not ordinarily imposed upon officials of the same branch of the service.

OFFICIAL CONFIDENCES

23. The official must observe the strictest silence in regard to all circumstances made known to him in connection with the fulfilment of his duties or in connection with his official position, which require in the interest of the state or the political parties or other official considerations the preservation of secrecy, or which have been specifically brought to his attention as strictly confidential. Exception to this statement is made only in case the official is under obligation to give official information in regard to such circumstances.

An exception may be made to this rule only in so far as a whole office as a group is released in a specific case from the obligation of preserving confidence.

The obligation to keep official confidence persists unchanged in relationships outside of the service and during the pension period as well as after the conclusion of the service contract.

Officials participating in the decision of controversies are forbidden to express their opinions unofficially in regard to such controversy or in regard to its probable outcome.

CONDUCT

24. The official must preserve respect for his position within and without his civil service relationships, must always conduct himself in accord with the requirements of discipline, and must avoid every act which might decrease the respect and the trust that his position requires.

The official is also obliged after retirement to observe conduct which respect for his position requires.

25. An official is forbidden to take part in any organization which because of its aims or affirmations is contradictory to the duties of an official.

In like manner affiliation with fraternities is forbidden if they pursue aims which disturb and restrict civil service offices and activities.

No official may belong to a foreign society which pursues political ends.

26. An official must treat his superiors with due respect and preserve a respectable behavior in contacts with his fellow-officials and his subordinates.

In official relations with political parties a desirable decorum is to be preserved. Helpful co-operation with parties on official matters is required within the limit allowed.

27. All claims (*Anliegende*), propositions (*Vorstellungen*), and complaints that an official has pertaining to personal matters or concerning the civil service in any way are to be brought without exception to the attention of the superior official, usually in an official manner. These are to be turned over without delay to the authorities responsible for the management of the office,

who, after an investigation of the facts, must give orders appropriate to meeting the situation.

The consideration of complaints against the official arrangements of superiors may not be postponed.

ATTENDANCE AT OFFICE

28. An official, if he has not been released from regular attendance at office or if his absence from service has not been excused, must observe strictly the regular prescribed office hours. If the necessities of the service require it, attendance may even be extended beyond the regular office hours.

A release from work on Sunday is to be made possible for an official in so far as this is consistent with the imperative demands of the service.

29. If an official is prevented from fulfilling his duties because of illness or other valid reasons, he is under obligation to bring this fact to the attention of the authorities as soon as possible, and, if required, to substantiate the reasons he has given through appropriate testimonials.

An official absent from service on account of illness is under obligation, upon order from the authorities, to submit himself to an examination by the official doctor.

An absence from service which has been excused, especially every absence due to illness, or in compliance with the health regulations of the police, shall effect no reduction in salary and have no detrimental effect on advancement to a higher salary level.

If an official arbitrarily remains away from duty longer than three days without presenting a satisfactory excuse, he loses his salary for the length of the unexcused absence, without reference to his disciplinary responsibility. In case his salary has already been paid, this amount is to be deducted from the next salary total.

PLACE OF RESIDENCE

31. An official is under obligation to choose his permanent dwelling in such a way that he can meet his official obligations promptly. He must inform the authorities of his place of residence and give notice of every change of address.

An official absent from service by permission must notify the authorities in case he resides for a time outside his permanent place of residence.

Officials on leave of absence must make known to the authorities who have control of the temporary retirement of officials the address where official explanations can be sent to them in the shortest possible time.

In so far as special restrictions in regard to the distance of an official from his place of office even outside of office hours must be introduced, these will be determined by the central office. In unusual circumstances such restrictions may be temporarily arranged by the director of the office.

MARRIAGE

32. In case an official marries, he must give the authorities notice of said fact within fourteen days.

The same regulation holds for officials in temporary retirement.

OUTSIDE EMPLOYMENT

33. In addition to his public duties, an official may engage in no pursuit and may accept no position, contrary to the propriety or dignity of his office, nor one which might hinder him in the complete and exact fulfilment of his official duties, nor one that would involve any possibility of bias in the fulfilment of the same.

An official is forbidden to take part in the administration of a joint-stock company or other company organized for profit either as officer or as a member of an administrative or visiting committee.

In exceptional cases, the administration may permit participation without salary in the direction of concerns of this kind if such participation lies directly in the interest of the state. It is not necessary to obtain permission to participate in case the concern in question has as its exclusive purpose the furtherance of humanitarian purposes or the promotion of the business relations or economic status of public officials or their dependents.

Every case of outside employment for profit must be reported to the civil service authorities.

34. No official may give expert opinion in circumstances which pertain to the duties of his profession without the permission of the competent authorities. Permission may be given if this opinion shows neither in subject matter nor aim any danger to the interests of the civil service in regard to the position and circle of influence of the official.

THE ACCEPTANCE OF GIFTS

35. An official may accept no gifts in money nor in money values offered directly or indirectly to him or his family dependents in consideration of his official duties, with the exception of those sums turned over to him by a superior authority; likewise, he may accept no other advantages in secret.

The consent of the authorities is required for the acceptance of honorary gifts.

Division III. Rights

VACATION

42. Each official has the right to a yearly vacation in so far as pressing considerations of the service do not stand in the way. The time of the vacation is to be determined in accordance with the circumstances of the service. The minimum length of the vacation is to be determined as follows: (*a*) for those undergoing a preparatory training period and for officials of the eleventh

class, fourteen days; (*b*) for officials with salaries of the tenth and eleventh class, three weeks; (*c*) for officials with salaries of the eighth and seventh classes, four weeks; (*d*) for officials with salaries of the sixth class and upward, five weeks.

Special vacations given by special permission are not to affect the length of the regular vacation in so far as the special vacations have not been extended beyond the length of time allowed in the permission given.

Cases of the extension of vacation beyond the allotted period of time are to be handled as cases of wilful absence from office without permission.

43. Grant of permission for a vacation does not exclude the power to alter the permission in case special considerations of the service demand it. The beginning or the continuation of the vacation is, however, to be made possible as soon as the situation permits. The normal travel costs are to be refunded in those cases in which trips are necessitated through unforeseen recall from vacation.

If the vacation offered by law could not be taken advantage of in whole or in part in one year, this fact is to be taken into consideration in the determination of the length of vacation in the following year.

44. Permission for leave of absence for more than three months may be given on condition that the salary for the period beyond the legal vacation limit be withheld, and that such time be not counted in the determination of advancement privileges or of pensions.

In case the leave of absence has already been effective for one year, a further continuation must be based entirely on the regulations given in the foregoing paragraph. Nevertheless exceptions in part or in whole may be made to the regulations mentioned in case extension of the leave of absence is desirable from the point of view of public considerations.

A period of active service intervening in a leave of absence can only be counted as an interruption in the year's leave of absence in case it attains at least half the length of the leave of absence enjoyed directly before. In this case the year is to be counted beginning first with the end of the period of active service intervening. When the period of active service intervening is of shorter duration the various single units of the leave of absence are to be added together in the calculation of a one-year leave of absence.

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CHANGES IN THE SERVICE CONTRACT AND ITS DISSOLUTION; TRANSFER

67. An official may be transferred to another post within the departmental division and province to which he belongs in case the situation demands.

In each case of transfer the question is to be considered whether the official has abilities to fill satisfactorily the requirements of the new type of service on which he is to be employed.

In case of transfer to another place of service, a suitable period of time is to be allowed for moving in accordance with the interests of the civil service, and in accordance with the utmost possible consideration of the personal relations of the official.

68. An official entitled to the normal expenses of moving is reimbursed for any rent due after the day when he has completely vacated his home, because of the impossibility of giving due notice. This provision does not hold in case the official has avoided loss by subletting; in any case the reimbursement of rent is not to be extended beyond three times the former monthly rent, exclusive of rent quotas applicable before the day given in the preceding sentence. Except for reasonable excuses, the official is to place the dwelling at the disposal of the office for all types of use without reservation from the day of his moving; otherwise he forfeits his right to a reimbursement of rent.

THE PERFORMANCE OF SERVICE AT CENTRAL OFFICES

69. Transferring higher officials to service in a central office or in an office which is a subdivision of a central office is permitted only if the official has been well qualified through a period of five years.

EXCHANGE OF SERVICE

70. An exchange of posts of service when sought by two officials of the same rank and branch of service may be allowed in so far as the two positions are not under the supervision of the same office. The consent of the two offices in question must be obtained. This permission may be given in case the request does not appear to injure the interests of the service or to increase expenditures from the state treasury.

If officials of a professional group discover that there is an infringement in their order of promotion through such an exchange of positions, permission for this exchange can only be given on the condition that the official who makes the change gives up his rights to rank for promotion in service in so far as they are detrimental to a third party.

LEAVE OF ABSENCE

71. If an official becomes a candidate for the position of representative in a constitutional representative body or for the position of substitute in the same, he is to be given leave from the civil service until the time of the completion of the vote.

If the official is chosen as state representative and does not decline to accept the election, orders must be given for his leave for the necessary period and, in case of election to the position of substitute, for the period from the time of his entry or call to the representative body.

72. The official on leave in this case enjoys his customary full income.

Time spent on leave may be counted in the calculation of the right to advancement to higher salary levels and for the calculation of pensions.

When these given circumstances are no longer effective, the official is called to re-enter the service. In this case he is under obligation to submit himself, upon arrangement of the competent authority, to an examination by the official doctor, who is to test his continued fitness for service and to testify to the same.

In all other respects, officials on leave of absence with salary are to be treated as officials on temporary pensions.

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DISSOLUTION OF SERVICE CONTRACTS

84. The official has the right to declare his withdrawal from the service contract in so far as he has taken on no obligations to the contrary. This declaration must be in writing and must be filed with the authority.

The declaration of withdrawal must be accepted by the responsible office according to the prevailing statutes. The acceptance may be given on condition that the office is turned over according to regulation.

Acceptance of the resignation may be denied only when the official is undergoing a disciplinary investigation or is escaping financial obligations by leaving the service.

An official on pension may also withdraw from this relationship of his own free will.

85. A declaration of withdrawal is to be regarded as accepted if it has not been denied within four weeks.

If the president of an authority subordinate to the central office refuses to accept a declaration of withdrawal, the official has the right to appeal to the director of the central office within fourteen days.

86. By withdrawing from the service or pension relation, the official loses his claim to all powers, rights, and claims arising from the same both for himself and for his family dependents.

In case of discharge as well as in case of the dissolution of the service contract in accordance with Articles 10 and 11, the official loses all powers, rights, and claims arising from this service relation both for himself and for his dependents, in so far as no more desirable treatment is promised according to Article 98 to him or to his family dependents.

PUNISHMENT FOR THE VIOLATION OF DUTY; RESPONSIBILITY FOR DISCIPLINE

87. Officials who violate their professional or official duties shall, irrespective of their responsibility in criminal law, be subject to a disciplinary penalty. The punishment shall be in proportion to the nature of the offense, as whether the specific violation of duty shows only a violation of the regulations or whether it involves injury or danger to public interests, and shall take into consideration the nature and severity of the fault, its repetition, and other complicating circumstances.

88. There may be no disciplinary proceedings for breach of duty begun by, or carried on against, an official who is a member of parliament during the period of the session without the consent of the house to which he belongs.

An official may not be prosecuted afterward for statements made during his active term of office as member of a constitutional representative body.

89. The right of a superior official to criticize subordinates and to call to their attention acts unbecoming an officer, as well as the power of civil service authorities to require the same to compensate for costs or injuries on the basis of the prevailing statutes, is not altered by this law.

An official required by an administrative decision on the basis of the service relationship to compensate for an injury may within thirty days after the administrative decision becomes effective prosecute his claim against the state by bringing a suit for investigation in the appropriate court in the district where he has the right of a hearing at the time of the declaration of the decision. The regulations of Article 38 of the introductory statute for civil proceedings apply to any such suit. In so far as the suit is granted the previous judgment becomes ineffective.

MINOR DISCIPLINARY PENALTIES

90. The minor disciplinary penalties are: (*a*) warning, (*b*) fines.

In no single case may a fine exceed the amount of 100 schillings. The sum of the legally valid fines which may be imposed on a single official within the period of one year may not exceed the amount of his salary for one month.

A fine may be imposed only after a written warning has been given.

91. The right to inflict a minor disciplinary penalty belongs both to the commission on discipline and to the director of the office as well as to the director of every superior authority.

Before a penalty is inflicted the official must be given opportunity to defend himself either in writing or orally.

The official is to be informed in writing of the disciplinary penalty inflicted, together with the reasons for the same.

In case of necessity fines may be collected by deducting them from salaries. The fines collected are to be applied to welfare work for the good of the officials. More detailed regulations in this regard are to be made through ordinances within the district.

Minor disciplinary penalties are not to be noted on the occupational record cards.

92. Complaint may be raised with the competent authority within fourteen days against any minor disciplinary penalty which has not been imposed by a disciplinary commission or by the director of the central office.

The director of the next higher office decides without appeal in regard to such complaints.

MAJOR DISCIPLINARY PENALTIES

93. The major disciplinary penalties are: (*a*) reprimand; (*b*) exclusion from salary advancement; (*c*) reduction of salary; (*d*) retirement with a reduced pension; (*e*) discharge.

Major disciplinary penalties may only be imposed by a decree of the appropriate commission on discipline on the basis of a disciplinary trial conducted according to regulations.

94. Exclusion from advancement to a higher salary may not be imposed for more than a period of three years.

Such exclusion delays advancement for the entire period determined in the decree, even when the right to advancement has already been attained before the decree becomes valid; in the calculation of the delay those periods of time are not to be counted which may not also be counted toward advancement to higher salaries.

95. Reduction of salary may not be imposed for more than a period of three years. The reduction determined on in the decree may not exceed 25 per cent. Advancement to higher salary levels is prohibited for the period of punishment.

In case the official arrives at the retiring age before the completion of the period of punishment, then his salary quota for the pension is to be reduced during the completion of the period of punishment by the same percentage determined in the decree.

96. In the cases cited in Articles 94 and 95 the official concerned is excluded from advancement to a higher rank before the conclusion of the time specified in the decree.

97. Retirement with a reduced pension as a punishment may be either temporary or permanent. The reduction from the normal pension may not exceed 25 per cent.

At the conclusion of the time specified in the decree, the official is to be treated as if he had been pensioned in accordance with Article 76 at the time the disciplinary decree became effective.

98. In case of discharge, an official who has been proved in need may in exceptional cases be granted in the decree a continuance of a minimum salary for support either for life or for a restricted period. The amount of this salary may not exceed half the pension that he would have received normally when transferred to a pension.

Non-responsible members of the family of the discharged official in cases worthy of attention may be granted a sum for support not to exceed the maintenance that they would normally have received upon the death of the person discharged; this maintenance may be granted only in case they would have been eligible at the time the decree became effective for such support at the decease of the discharged official. This, however, is not effective if the regulation of Paragraph 1 of this article is applicable; it may, however, be effective up to the time of the beginning of such a salary granted to the discharged in the decree.

The legal regulations in regard to the loss of pension and maintenance premiums in case of a criminal judgment are effective also in regard to such grants for support.

99. In the determination of major disciplinary punishments, consideration

is to be taken of the severity of the offense and of the damage arising from it as well as of the rank of the guilty person and of the total behavior of the official previous to the given offense.

The regulations in regard to punishment contained in the special regulations, in which certain violations of duty are associated with certain disciplinary penalties, are repealed.

DISCIPLINARY COMMISSIONS AND PARTIES

DISCIPLINARY COMMISSIONS

100. Disciplinary commissions are to be established as follows in order to carry on disciplinary proceedings: (*a*) disciplinary commissions of the first instance for the authorities directly subordinate to a central office; (*b*) superior disciplinary commissions at the central offices.

In cases in which the appointment of a disciplinary commission of the first instance is not possible or practicable, the director of the central office must assign the tasks of this commission to another disciplinary commission of the first instance.

101. Each commission on discipline is to consist of a chairman, his representative, and the necessary number of members. These members are to be appointed by the director of the central office from among the professional officials and those with legal training who are available in the district of the authority for which the commission is established.

If disciplinary matters pertaining to another authority are, in accordance with Article 100, Paragraph 2, referred to a commission, the director of the central office is to appoint members for this commission to the required number from among the staff of these authorities.

If necessary, commissions are to be supplemented for the completion of the period of operation by the appointment of additional members.

The members of the disciplinary commission are to be entirely independent in the fulfilment of the duties of their office.

COMPETENCY

102. (*a*) The disciplinary commissions of the first instance are directly competent to try all officials who are employed by the respective authorities, or by one of the offices subordinate to them, or such officials as may be referred to them in accordance with Article 100, Paragraph 2, with the exception of officials from the sixth class up.

(*b*) The superior disciplinary commissions are competent to try all staff members of the central office or other officials therein and subordinate district officials from the third class of service up.

Cases appealed from disciplinary commissions of the first instance are to be tried by the superior disciplinary commission appropriate to the accused official.

A disciplinary commission is to be established among all state school authorities for those state officials of the above-named rank who have been introduced as district school inspectors. State regulations pertaining to this category of state officials are to be further applied in accordance with their meaning.

103. The competency of a court to try a case is to be determined by the type of work and the standing of the accused official and the time of the beginning of the disciplinary proceedings; this regulation applies even when the accused committed the violation of duty with which he is charged at the time when he held some other civil service position. In cases of the latter sort, the question whether a violation occurred and whether it is punishable or not is to be judged in accordance with those service regulations to which the accused was responsible at the time the act was committed. In the passing of judgment, the qualification and the reliability of the official with respect to the present position he holds is to be taken into consideration.

The superior disciplinary commissions decide with respect to the competence of a court to try a case.

DISCIPLINARY SENATES

104. The commissions on discipline conduct their business and make their decisions in senates, which consist of the chairman or his representative and four associates. At least two of the associates must have had training in law.

The senates are to be appointed for one year by the officers of the competent authorities for which the commission on discipline is established.

In addition, the order in which the remaining members of the commission enter the senate as substitutes in case some member of the senate should be prevented from attending is to be determined.

If the disciplinary matters of another commission are referred to a commission in accordance with Article 100, Paragraph 2, then one or two members of the commission are to be called into the senate in the order determined in Article 101, Paragraph 2.

105. An absolute majority is sufficient for the making of decisions in the senates on discipline. The president votes last.

The punishment of discharge can be inflicted only when four members of the senate favor such action.

106. The authorities for which a commission has been established must provide the funds necessary for the material and secretarial needs of the commission.

The officers of these authorities also appoint in some cases the keeper of the records from among the subordinate officials trained in law.

DISCIPLINARY ATTORNEYS

107. In each disciplinary commission an attorney is to be appointed from among the legally trained officials in accordance with the regulations in force for the appointment of commission members. His duty shall be to represent the official interests that have been violated.

It is incumbent upon this disciplinary attorney to stand for the preservation of the honor and respect of the profession of officialdom and for a strict fulfilment of the duties of office.

The disciplinary attorney must be allowed a hearing in respect to the preservation of the interests intrusted to him before any decision is made.

108. Officials appointed as members of the commission and as disciplinary attorney are to withdraw if there is some change in their official position which disqualifies them for the appointment.

During the time a criminal or disciplinary suit is directed against such an official, he may take no part in the procedure of a commission on discipline. In case the trial ends with his punishment, he loses his position and another official is to be appointed in his place in the prescribed manner.

DEFENSE

109. The official called to account for his actions has the right to employ in the disciplinary trial an attorney of defense either from officials in active service in the district in which the commission operates or from persons enrolled as defense attorneys.

On request an attorney for the defense is to be appointed for the accused official by the officers of the authority in which the commission on discipline has been established.

With the exception of the case mentioned in the preceding paragraph, officials are under no obligation to undertake a defense. They may in no case accept payment and have a claim only to repayment by the accused of the necessary and appropriate expenses.

The defense attorney is entitled to present freely everything which he considers useful in representing the accused, and to make use of all legal methods in his defense. He is duty bound to keep strictly confidential all information coming to him in his position as defender.

DELEGATION

110. When the necessary number of members required to form a senate are not available, then the commission on discipline must turn over the disciplinary question to another commission on discipline.

It may order the same action upon request of the disciplinary attorney or of the defense attorney if there is any reason to question the impartiality of the existing commission on discipline.

EXCLUSIONS AND REFUSALS

111. In the exclusion of members of a commission on discipline, the rules for criminal proceedings are to be applied in accordance with their meaning.

In addition, the accused official has the right within eight days of the notification of hearing to challenge summarily any two members of the senate on discipline.

DISCIPLINARY PROCEEDINGS

PRELIMINARIES

112. The supervisory officers turn over a notice of disciplinary cases to the existing commission on discipline, after making a preliminary investigation of the facts.

113. The commission on discipline decides after a hearing of the disciplinary attorney without oral discussion whether a disciplinary investigation is to be begun or not. Before the decision a rehearing of the charge may be ordered.

If the disciplinary commission believes that only a minor disciplinary offense is involved, then it can either turn over the documents to the officers of the competent authority or else itself impose one of the minor punishments.

With the consent of the disciplinary attorney the disciplinary commission may order an immediate oral hearing instead of ordering the beginning of a disciplinary investigation. The regulations of Article 122 apply to such an order.

114. The order for the institution of a disciplinary investigation is to be officially turned over to the accused official.

No legal methods are available to prevent institution of a disciplinary investigation. The disciplinary attorney may appeal to the superior disciplinary commission within fourteen days against any disciplinary commission of the first instance which has refused to institute such an investigation.

115. If the officers of the competent authority or the disciplinary commission believe that the violation of law of which an official is accused is punishable under criminal law, the report is to be given to the state's attorney and the competent disciplinary commission is to be informed of the matter. Until the criminal proceedings are concluded, the disciplinary proceedings must rest.

116. If a criminal judgment is directed against an official which, according to the existing legal regulations, has as a direct consequence the loss of office, then the discharge of the official must be ordered by the administration without further proceedings. The regulations of Article 98 apply in this regard.

117. The criminal courts are under obligation to notify the competent authority of the order for arrest and the institution of criminal proceedings against an official. They inform the competent commission on discipline of the same.

After the conclusion of the criminal proceedings, the criminal court must send the records to the competent commission on discipline.

EXAMINATION

118. If a disciplinary investigation has been ordered, the authority for which the commission is established appoints one or more investigating officers from among the legally trained officials subordinate to it. If some disciplinary matter is in question which has been referred to them in accordance with Article 100, Paragraph 2, from some other authority, then an official from this group may be appointed as investigating officer provided he has had

legal training. Officials who are responsible for other activities in the disciplinary proceedings cannot be appointed as investigating officers.

The regulations of Articles 108 and 111, Paragraph 1, are to be applied to investigating officers in accordance with their meaning.

119. The investigating officer hears witnesses and specialists, not on oath, investigates all circumstances and proofs necessary for the complete explanation of the affair, and gives the accused opportunity to express himself in regard to all points of the charge. Refusal by the accused does not delay the prosecution.

The investigating officer may call on the political and police officials for co-operation. They should be called on especially when witnesses or specialists who live outside the police district of the investigating officer fail to answer the summons of this official or without legal reason refuse to give testimony.

The political and police authorities must in such cases proceed in accordance with the existing regulations for summoning and examining parties.

If the examination under oath of individual witnesses and specialists is essential to the establishment of the truth, the investigating officer may, if he himself is not a judicial official, appeal with the consent of the competent authority to the district court for an examination under oath. If he himself has judicial powers, he may in case of need examine witnesses and specialists under oath in accordance with the rules of criminal law.

The rules for criminal procedure are to be applied in accordance with their meaning to the examination of witnesses and specialists and to the payment of the same.

120. The disciplinary attorney may request investigation of new charges.

The accused also is entitled to request the undertaking of specific investigations.

If the investigating officer has doubts as to the advisability of undertaking to comply with a request for further investigation, he must procure the decision of the disciplinary commission. The regulations of Article 114 apply to the making of such a decision.

121. During the disciplinary investigation the investigating officer in so far as he finds it consistent with the purpose of the proceedings, may permit the accused official and his representative to examine in part or in full the records of the case.

After reaching a decision (*Verweisungsbeschluss*), the accused official and his representative have the right to see the record of the proceedings, with the exception of the record of consultations, and to make a copy of them.

No information may be given to the public in regard to the content of the records.

REPRIMAND AND SUSPENSION

122. The records of the finished investigation are turned over to the disciplinary attorney and then are presented to the disciplinary commission with his proposals.

The disciplinary commission then decides without an oral hearing whether the matter is to be closed by reprimand or whether a trial for violation of duty is to be undertaken. In the latter case, it may also decide on an order in accordance with Article 113, Paragraph 2.

In the charge the points of accusation must be specifically included and the orders be given for the oral hearing. No legal means are available to oppose the oral hearing.

Within eight days after the delivery of the decision, the accused official and the prosecuting attorney may make further motions in regard to which the disciplinary commission decides without recourse to a separate remedy.

The decision at the close of the trial, together with reasons, is to be presented officially to the accused and to the disciplinary attorney. Within fourteen days, the latter may appeal to the superior disciplinary commission against the decision of the disciplinary commission of the first instance.

ORAL HEARINGS

123. The day of the oral hearing is determined by the chairman of the disciplinary commission. The accused official and his defending attorney are to be summoned to this hearing by means of a copy of the decision or by the order for the institution of proceedings; they are to be sent in addition a list of the members of the senate on discipline.

The commission on discipline may order the accused to appear in person at the oral hearing.

124. The hearing may not be open to the public. The accused may, however, request that three civil service officials who possess his confidence be admitted to the proceedings.

The consultations and the voting during and at the close of the proceedings are to take place in secret meetings.

No information may be given to the public as to events during the proceedings.

125. The proceeding is to begin with the reading of the charge.

The examination of the accused and of the witnesses and specialists that have been summoned then follows, and thereafter the reading of the minutes taken in any preliminary proceedings and of desired documents.

The accused and the disciplinary attorney have the right to express themselves in regard to evidence presented and to question the witnesses and specialists.

After the conclusion of the testimony the disciplinary attorney is to be given opportunity to speak and a like opportunity is to be given to the accused with his attorney for defense. The accused is to have the last word.

VERDICT

126. The disciplinary commission is to consider in the formation of the verdict only that which has been presented in the proceedings. It is not bound by the verdict of acquittal of the criminal court nor by the rules of proof

thereof, but is, after free and conscientious consideration of all means of proof presented, to decree the conviction it has reached.

127. In the verdict, the official must either be declared innocent of the accusations of violation of duty made against him or must be declared guilty of such.

In case of a verdict of guilty, the decree must contain a stipulation in regard to the appropriate minor or major punishment for the official in question.

128. In case the official is declared not guilty or is punished with some minor penalty the cost of the trial is borne by the state. If a major punishment is decreed against him, the decree must include a statement in regard to how much of the cost of the trial he is to bear in consideration of the weight of the testimony, his property and income, and the punishment decreed. All expenses incurred by an accused in procuring a defending attorney are in any case to be met by him.

128. The verdict is to be announced immediately, and within eight days at most is to be delivered in complete form to the disciplinary attorney and the accused official.

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130. Minutes are to be kept of the proceedings which contain the names of those present and an account of the progress of the trial in respect to all important points.

Special and separate minutes are to be kept of the consultations and voting.

Both sets of minutes are to be signed by the chairman and by the secretary.

131. If the official dies before the decree becomes effective or if he is permitted to resign from the service, the trial is to be discontinued.

APPEAL

132. An appeal may be made either by the accused or by the disciplinary attorney in case either party is dissatisfied with the sentence of a committee on discipline in regard to guilt, punishment, or payment of costs.

An appeal has the effect of suspending the judgment.

An appeal for the good of the accused is forbidden when only a minor punishment has been decreed.

133. The appeal must be filed within fourteen days after service with the president of the disciplinary commission.

The president must reject the appeal if it is inadmissible, or if it comes too late, or if it is made by a person who has not the right of appeal.

134. The court of appeal decides without an oral hearing, (*a*) if it considers further examination necessary. In this case the disciplinary commission of the first instance is to be ordered to complete the investigation; (*b*) in case error in the first instance makes rehearing necessary. In this case the decree in question is to be nullified and the case returned to the commission of the first instance; (*c*) if the appeal pertains only to a decision in regard to payment for costs.

If the case does not come under one of the headings mentioned in the foregoing paragraph, the chairman sets the day for the oral hearing. For further procedure the regulations in regard to oral hearings and the verdict in the first instance are to be applied in accordance with their meaning.

EXECUTION OF THE VERDICT

135. After the decree becomes effective, the chairman of the commission on discipline enforces the penalty through the competent authorities and turns over officially to the competent officers the complete disciplinary verdict together with the reasons for the decision.

Major disciplinary punishments are to be registered in the occupational record, and as long as this registration exists a copy of the decree is to be preserved.

136. Upon the completion of a period of three years after the sentence goes into effect, in no case, however, before the completion of the period of punishment decreed, the registration of the punishment is to be erased upon request, in case the official's behavior since that time has been blameless. The director of the central office has the power of decision in such cases.

The director of the central office may, as soon as the punishment has been erased from the occupational record, in case of a continuous blameless record and very good performance of service, permit the time of exclusion either in part or as a whole to be counted toward promotion to higher salary levels.

REOPENING OF PROCEEDINGS

137. If the institution of disciplinary proceedings has been refused, or the trial dismissed with a verdict of not guilty and the accused released, or a sentence of minor punishment decreed, proceedings to the disadvantage of the accused may be reopened upon request of the disciplinary attorney only when new facts and proofs have come to light which alone or in combination with proofs formerly brought forward appear to give foundation for the conviction of the accused official and the imposition of a major disciplinary punishment.

138. An official subject to a major disciplinary penalty or his legal heir may demand reopening of proceedings even after the completion of the sentence, if he presents new facts or proofs which alone or in combination with testimonials formerly presented seem to give a suitable basis for the release of the accused, for decree of a minor punishment, or instead of dismissal a milder major disciplinary punishment.

139. Those commissions on discipline which decide in the first instance decide after an oral hearing in regard to the reopening of proceedings.

140. The reopening of proceedings nullifies immediately those items in the sentence in regard to which reconsideration has been granted.

With the reopening of proceedings matters usually undergo reinvestigation. Execution of the sentence is suspended during this process.

141. If the official, in whose behalf proceedings have been reopened, is again declared guilty, no more severe penalty may be inflicted than was imposed by the former sentence. In determination of the penalty, the punishment already undergone is to be taken into consideration.

The disciplinary commission which permitted the reopening of proceedings on behalf of the accused may with the consent of the disciplinary attorney give a verdict immediately of "not guilty" or decree a lesser penalty.

142. If, on the basis of the reopening of proceedings, the trial is discontinued or an official who had been sentenced to a major disciplinary punishment is declared "not guilty," the state is under obligation to pay back all he has lost in official income because of the unwarranted judgment.

If the official who had been sentenced, is on the basis of a reopening of proceedings, sentenced to a lesser disciplinary penalty, the disciplinary commission may decree that the official income lost through the execution of the punishment be returned to him.

After the death of the official, dependents have the right to a return of any money for support that they failed to receive from the accused who had been sentenced in such a case.

REINSTATEMENT

143. In case an official fails to observe the required notice for employing a remedy, the court of appeal (*Berufungsinstanz*) may allow the reinstatement of the accused official in his former position, if the latter is able to prove that he was prevented from observing the required notice by circumstances beyond his control.

The request for reinstatement in the former position must be presented to the disciplinary commission of the first instance within the period of fourteen days after such conditions cease, but may be presented only after the legal steps have been taken. The commission gives the request to the disciplinary attorney for his judgment.

If the court of appeal approves the reinstatement, then it may pass verdict immediately.

SUSPENSION

144. The disciplinary commission may suspend from service at any time an official against whom criminal or major disciplinary proceedings have been begun, if this action seems appropriate in consideration of the nature and severity of the violation of duty.

The disciplinary commission also has this right in cases in which the suit is brought for violation of faith or for bankruptcy.

145. If an arrest of an official for criminal examination is ordered, the head of the office or a superior authority must without delay order the temporary suspension of the arrested official.

In addition, every officer responsible directly or indirectly for the supervision of the service has the right to order the temporary suspension of an official if he has been guilty of open disobedience or if by his continuance in office he would endanger respect for the office or for the significant interests of the civil service because of the nature of the misdemeanors of which he is accused.

The power to order a temporary suspension belongs to the official intrusted with the inspection of offices under the foregoing conditions.

A suspension from service ordered temporarily in accordance with Paragraph 2 may be declared ineffective by any superior authority.

Every suspension ordered temporarily must be reported to the disciplinary commission, which must without delay either cancel or approve the suspension.

146. By decision of the disciplinary commission the official may be reduced to two-thirds of his salary during the time of the suspension.

147. The suspension must end at the very latest with the legal conclusion of the disciplinary proceedings.

In case the circumstances which led to the suspension of an official no longer hold, the disciplinary commission is under obligation to discontinue the suspension.

148. The disciplinary commission decides in regard to the ordering, approving, or canceling of a suspension without an oral hearing.

The decision of a disciplinary commission of the first instance may be attacked within fourteen days after its announcement. An appeal does not, however, have the effect of postponing the decree.

No legal action may be taken against a temporary suspension.

DELIVERIES

150. All deliveries which must take place according to the regulations of this division are valid and affect the length of the period decreed, if they have been made to the person concerned or to his representative, and, if his place of residence is not known, if they have been turned over to the last civil service authority with which he worked.

LEGAL METHODS AND TIME ALLOWANCES

151. If not otherwise specified, the decisions and orders of the disciplinary commission of the first instance or the chairman of the disciplinary senate may be contested through no legal methods other than those allowed to protest against the making of a decision or verdict. Complaints must be brought to the chairman of the disciplinary commission of the first instance and are to be returned by him if they are inacceptable, are too late in appearance, or have been made by a person not qualified to make complaint.

The time allowances given for the employment of such legal methods may not be extended. They begin on the day following the day of the delivery of the verdict. Neither Sundays nor holidays are to be deducted in measuring its length. If the period of time allowed happens to end on a Sunday or holiday, then this period is considered as ending on the first work day following. The regulations in force for courts in general determine which days shall be considered as holidays. The days required for the postal delivery of the complaints are not counted within these time allowances.

Petitions may also be sent by telegram.

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SALARY LAW OF 1927

CHAPTER I. GENERAL REGULATIONS

SCOPE OF APPLICATION OF THE LAW

1. This law applies to all federal employees of the Republic of Austria including the postal, telegraph, and telephone employees. Those employees and persons are exempt who are working under individual contract or who are employed only for a limited time or for some special work. The wages and conditions of employment of such temporary and permanent assistant employees is controlled by regulation. Persons who enter the federal service only for a secondary or part-time employment are to be employed under a special contract and are not included in the regulations of this law.

Women employees are to be treated in the same manner as men in regard to this law when nothing to the contrary is specifically stated in this regard.

2. The federal employees included under this law may be divided as follows: (1) officials of the general administration, (2) judges and state attorneys, (3) teachers and officials in school administration, (4) guards, (5) members of the federal army, (6) officials of the state tobacco control, of the state printing offices, and of the Wienser Zeitung.

CHAPTER II. OFFICIALS OF THE GENERAL ADMINISTRATION

3. The regulations of the second chapter are to be applied to all federal employees included in this law when it is not specifically stated in this law that one of the following chapters is to apply.

OFFICIALS AND PROSPECTIVE CANDIDATES

4. Among those federal employees who are to be included under these regulations of chapter ii are officials (*Beamte*) and, if they are in training for service, probationers. Appointment to federal employment must as a matter of principle follow a period of training as probationer and cannot take place before the employee has reached his eighteenth year.

Candidates must always be accepted for a specific branch of an employment group. Appointment is permitted only when a position in this special branch of the service is vacant. Candidates may not be accepted when there are qualified candidates among temporary or permanent employees or workers who would be included under this law; exception is made when the appointment of candidates is necessary in consideration of the needs of the service for the training of a younger, fully prepared successor.

A probationer is considered to have the essential official status in the conduct of the official duties turned over to him. He is under the same regulations as officials in so far as the existing regulations for probationers contain no special regulations.

The length of probation must amount to two years if the regulations of Article 5, Paragraph 2, are not to the contrary.

APPOINTMENT

5. Permanent appointment is to take place on the first of January or the first of July following the conclusion of the prescribed preparatory service (Art. 4, Par. 4) and after the fulfilment of all remaining prescribed regulations. The requirement of the prescribed probationary period may also be considered fulfilled if this time is to end on one of the first three days of the month following the months mentioned in the foregoing.

Upon appointment the candidate is to receive a position in the lowest class of the service (Art. 17, Par. 2) in the branch for which he has been accepted, tested, and prepared, and is to receive the beginning salary as prescribed for his employment group and class of service.

If special considerations of the service make it appear desirable, a person may be appointed by having a position bestowed upon him by decision of the federal government; in such a case, as a special exception and with the order of the federal president, said person may, upon recommendation of the federal government, receive a special salary differing from the salaries recognized in the regulations of this law.

EMPLOYMENT GROUPS

6. Officials are divided in accordance with their membership in a branch of the service into eight employment groups. Appendix II contains the branches of the service into which these groups are divided.

For membership in employment group 8, full secondary-school and university training are prescribed. The federal government may make membership in a branch of an employment group dependent on the presentation of credentials certifying to a specific school training as a proof that the candidate has had some specialized education.

In employment group 8 persons filling the higher technical and business administrative positions of the military service are to be included. By the terms higher technical and business administrative positions of the military service are to be understood those forms of service for which complete university training, or the completion of higher artillery or engineering courses, or the completion of courses in artillery engineering or construction engineering, or the taking of the introductory courses and the subsequent appointment to office in artillery or engineering divisions in officers' engineering corps, is required for appointment to the positions of artillery engineer or building engineer. It is to be determined by law what types of preparatory education may supplement these requirements.

THE CIVIL SERVICE OF SWEDEN

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INTRODUCTION[1]

CHARACTERISTICS OF THE ORGANIZATION OF THE STATE ADMINISTRATION[2]

In Sweden the king is the head of the state administration. According to the "form of government" (*regeringsformen*), the foremost of the four constitutional laws which form the constitution of Sweden, he has the power to govern the state (Art. 4), and his commands and orders shall be obeyed by all civil servants (Art. 47). According to the "form of government" the government of the kingdom is exercised in this way: the king alone resolves, but before a decision is made he must consult the council of state (*statsrådet*), which consists of twelve members; he is, thus, really acting, as an Englishman would say, as the king in council (Arts. 4–10). The members of the council, i.e., the councilors of state (*statsråd*) are solely acting as advisers to the king; they have no legal authority to decide any matters alone. Ministerial government is unknown to our constitutional law. Another thing is that the council of the "ministers" (we often call the councilors by this term) actually always will be deciding for the resolution made by the king. Thus, the council has about the same position in relation to the head of the state as the cabinets in, for instance, England or France.

In other respects, as far as the central administration is concerned, a pronounced dualism exists. On one side are the nine state departments, each of which has a member of the council as chief, and whose sole task is to prepare the decisions made by the king in council, acting on the advice of the councilors; thus, they have only the character of chancelleries. On the other side are the central government offices totaling about forty; for instance, the board of public pensions, the board of audit, and the board of the post-office. These institutions are not under the personal jurisdiction of the councilors of state. Even in relation to the king they have a very independent position. Their duties, their competence, and organization are permanently outlined by instructions.

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[1] Translated by Mrs. Chester N. Gould.

[2] This subject is treated somewhat more exhaustively in *Grundzüge der schwedischen Staatsverwaltung*, by Professor Nils Herlitz.

Even if the king at times gives the offices special orders and positively takes some of their matters under his own consideration, this is an exception.

Subordinated to these central offices are the organs of the local state administration. Directly under the king are, however, the county governments. Sweden is divided into twenty-four counties (*län*) and the general governorship of Stockholm. In every county are representatives of the king, called *Kungl. Maj:ts befallningshavande.* The county government consists of the lord-lieutenant (*landshövdingen*) as sole determining power and two reporting department heads. In Stockholm the county government corresponds to the offices of the governor-general and the lord-lieutenant to the governor-general.

Along with the state administration Sweden has a well-developed and extensive municipal administration, which is in the hands of elected, unpaid representatives of the people. The municipal administration (*kommunalförvaltning*) also makes use of a large body of employees, especially in the larger cities. In the following we will not consider these employees; on the whole their position is regulated by each municipality.

CIVIL SERVANTS

1. *Introduction.*—Swedish civil servants have always had a relatively great amount of independence. The very organization of the administration has been impressed by the idea of not allowing the lower organs of the administration to be too dependent tools in the hands of their superiors. Note, for instance, the relation between the king (including the councilors) and the central government offices; they are expected, first of all, to act on their own responsibility. Furthermore, the personal legal position of the civil servants has been fairly strongly developed; note their right to the office and various rights founded thereon. In both these respects it may be said that

the difference, for instance, between the position of a judge and that of a civil servant is far less marked than in most countries. The civil servants in Sweden also have, comparatively speaking, a high social position, the state service being able to offer inducements even for those who want to create a rather independent position for themselves.

The extension of state activity into new fields (the administration of the state railways, the telegraph, etc.) has caused other points of views to make themselves prevalent. Within vast parts of our state administration one must admit it is unnecessary that the old principles should be upheld. The demands for businesslike and effective organization must therefore by necessity supersede the demands—if the expression is permitted—of a judicial method of treating affairs. Within these departments of state activity the old principles have therefore been modified, though not entirely given up. At the same time, however, as a consequence of the increasing demands for efficiency of the state administration, the legal position of the civil servants has been considerably weakened even within other branches of the administration.

As regards the different categories of civil servants one differentiates between permanently appointed, regular officers (*ordinarie tjänstemän*) and those having extraordinary appointments (extraordinary officeholders, *extra ordinarie tjänstemän* and other *icke ordinarie befattningshavare*). Beside these there are workmen and some others employed on a civil law basis.

In Sweden no special law regulates the status of the civil servants, but regulations in this regard are to be found at various places. (1) In considerable part the status of civil servants is regulated by the king through his instructions. (2) Furthermore there are regulations in the constitutional laws (see *Regeringsformen*, Arts. 28–32 and 34–36, No. 3) and in some statutes made by the king and parliament. (3) In addition to legislation, and in a still higher degree, the influence of parliament is secured through the treatment of the budget.[1] The most important of those regulations, which parliament decides in connection with the budget estimates, are the so-called pay regulations. Among these are especially to be noted: the pay regulations of August 22, 1921, for civil servants in the state departments and certain other offices belonging to the civil state administration, "the civil pay regulations," which, with certain changes, were reissued June 6, 1925, and the pay regulations of June 19, 1919, for civil servants in the post-office and the telegraph office, the state railways, and the state waterworks, "the pay regulations for the departments of communication." These pay regulations, which together apply to the greater portion of the civil servants, are the results of an effort to create uniform conditions of payment and service for all the civil servants. It must also be observed that parliament also decides how many places there shall be in every branch of the administration. This is no mere formality; parliament will always very carefully examine whether there is a need for new places or not. This rule does not apply to all places in the "departments of communication." The pay regulations are completed by the regulations made by the king alone regarding the status of extraordinary officeholders and related matters. Regulations regarding the status of the civil servants can to a certain extent also be given by the central government offices.

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[1] The treatment of the budget has not the character of legislation in Swedish public law.

2. *Qualifications.*—In order to be appointed as a civil servant the candidate must have certain qualifications. These are given in the *Regeringsformen,* Article 28, in some laws and above all in the instructions for several branches of the state administration. Occasionally the king has given authority to an office to fix the requirements. These requirements contain especially the passing of an examination at the university qualifying for an official appointment (*ämbetsexamina*) or, for lower positions, the student matriculation examination (*studentexamen,* at age of eighteen to nineteen) or the *realexamen* (at the age of fifteen to sixteen). Certain offices arrange special courses with examinations.

3. *The procedure of appointments and promotion.*—The procedure of appointments is regulated through prescriptions in the *regeringsformen* and in the king's instructions. The princi-

pal rule is that the king has the right to make the appointments. This right is, however, largely delegated to the central government offices and other authorities. It is only for the higher positions that the king has reserved the right to appoint the holder, as a general rule those who in the beginning get a payment of about 8,800 kroner or more. Most civil servants are appointed by the central government offices. In rare cases the co-operation of special appointment commissioners is required; this is, for instance, the case in the department of foreign affairs. When the king makes the appointments, sometimes, but not always, a nomination (*förslag*) is made by a subordinate authority, for instance, a central government office.

The Swedish state administration is entirely unfamiliar with the system of employees elected by a popular vote. Exception is made for clerical (i.e., ecclesiastical) positions, which are instituted through election of the parish, as a rule from a nomination list made by the chapter. Another exception is found in the town magistrates, at the same time courts and organs of the administration; some of these employees are elected by municipal councils, the others are appointed by the king from a nomination list established by election by the citizens.

The majority of state offices are filled through application. The usual way of filling a vacancy in a permanent post is to advertise it officially; thus, there is opportunity for everybody to apply, and an organized competition is secured.

The basis for getting an appointment or a promotion is "capability and merit." This prescription properly refers only to positions filled by the king, but as a customary rule it also applies to appointments in general and at times it is also included in the instructions.

This rule, which originally was turned against the prerogatives claimed by the nobility, is of great importance in maintaining the theory that an objective point of view should be observed when making appointments for state service. Beyond a doubt one can maintain that appointments in Sweden are mainly based on objective grounds; public opinion forcefully reacts against attempts to favor political parties or otherwise to apply arbitrary principles. The disadvantage of the ruling principles is a tendency to put too much weight on "paper merits."

The very effective public control to which the organs of the state administration are subject, both as regards the appointments to services and other phases of their activity, is of great importance in this connection. The following points must be mentioned as particularly important elements in this control. (1) Everyone who has failed to be appointed or promoted has a right to try to get the decision changed by appeal. The highest court of appeal is in such affairs the king in council. The right to appeal is open even though there is no legal error attached to the decision and when the complainant only is of the opinion that discretion, *das freie Ermessen*, has been inaccurately used. (2) A solicitor-general, elected every year by parliament, has the right to prosecute each employee who has failed to discharge his official functions properly. (3) According to one of the constitutional laws (the law of freedom of the press), all documents in administrative offices are public records. Anyone can demand that they be produced. Thus, the documents in a matter of promotion are accessible not only to the applicants, but to everyone including the newspapers.

There are various forms of appointment, viz., (1) *fullmakt*, letter of appointment (compare *pleinpouvoir*, *Vollmacht*), (2) *konstitutorial*, (3) *förordnande*, (4) *antagningsbevis* (engagement certificate). *Fullmakt* and *konstitutorial* are given for permanent positions. The difference between them is that the one who has been engaged on *konstitutorial* has not quite the same right to remain in the service as the one who has a *fullmakt* (see following). *Konstitutorial* is generally used for the lower positions, *fullmakt* for higher positions. In the "communication departments" there are only *konstitutorial*, no *fullmakt*. Temporary appointment is used only to a limited extent, partly as the usual form for filling certain positions when it is valid for a given time or until further notice, partly as a provisional form, either when a position is vacant or when it is filled, but the holder is not able to attend to it (substitute appointment).

The engagement certificate (*antagningsbevis*) is used in appointing extraordinary officeholders.

4. *The status of the civil servants.*—In principle, the duty of the civil servant is to be determined when the employment begins. The original statement with regard to the duties connected with the position is, therefore, decisive. Such prescriptions are to be found in particular in the instructions. In case, however, the pay regulations are revised, it can be prescribed that the servants in question will enjoy the new benefits only if they assume the new obligations. Agreement to these new regulations is presumed, and anybody who will not subject himself to them must give notice. Moreover, in later instructions and regulations a more vague description of the service duty has been used so that an extension thereof can easily take place when it is necessary, as regarding the alteration of the burden of labor, quantitatively and qualitatively, and regarding the obligation of moving from one place to another. Whether or not these rules are consistent with the prohibition against removal as found in the *Regeringsformen*, Article 36, is not quite clear. In this connection the regulations regarding the time of service in departments of communication should be mentioned. Special service boards are working to deal with these matters. These boards also include representatives of the personnel unions.

It is only in exceptional cases that the civil servant receives other than monetary remuneration. A civil servant with *förordnande* receives an honorarium, the amount of which is determined by regulation. The salaries (*lön*) received by officeholders who are appointed through *fullmakt* or *konstitutorial* are determined by the pay regulations. Beside the salary there are certain special economic advantages, such as perquisites (which, however, lately have been considerably limited) and those advantages which are listed in the pay regulations. In addition to the specified amounts as mentioned in the pay regulations, an amount is paid, since the war, in the form of what might be called a bonus to meet exceptionally high costs of living; we are now going to abolish this system.

Concerning pay questions a certain influence has in some cases been assured the civil servants through the so-called boards of pay regulations (*lonenämnder*).

One of the economic rights of the civil servants is the right to pension. The regulations concerning this are given in a statute regarding the right of pension of civil servants properly so-called, dated October 11, 1907, and other statutes concerning other categories of civil servants. Pensions to widows and children are established through pension funds, to which the civil servants must pay their dues.

The civil servant is in no sense deprived of the common civil rights. He can, for instance, take a seat in parliament; then he has a right to the necessary leave of absence. There are many civil servants in the Swedish parliament. Civil servants may belong to what associations they like; there are many associations of civil servants.

If a civil servant has committed an error in the discharge of his official functions and this error is of a relatively unimportant nature, he may be punished in a disciplinary way by an administrative authority, in general, an authority in a superior position to the person in question. The disciplinary penalties are: warning, fines, salary decreases, suspension, and for civil servants engaged through *konstitutorial*, *förordnande*, or *antagningsbevis* (not those with *fullmakt*) even a discharge. Against the disciplinary punishment there is always an appeal to the highest administrative court (*regeringsrätten*). Higher civil servants are, however, not subjected to disciplinary punishment. Errors committed by higher civil servants and errors of a more serious nature are brought before a court of justice, and the offender is punished according to the criminal law. Only certain prosecuting authorities, for instance, the solicitor-general and the authority to which he is subordinate, but no private person, can bring action against a higher civil servant. If a civil servant, through error in the discharge of his official duties, has brought damage upon the state or private persons, he will be sentenced to pay damages.

5. *The permanency of the employment.*—The *Regeringsformen*

(Art. 36) sets down that a civil servant can be deprived of his position only for a crime by decision of a court. The application of this rule, however, has steadily diminished. The *Regeringsformen* stipulates that the *fortroendeämbetsmännen*—a minority of high officeholders—may, at any time, be discharged from their service. The same is now true—in spite of the rule of the *Regeringsformen*—with respect to the extraordinary officials and in general also, those who are temporarily appointed with *förordnande*. Extraordinary officials have, as a rule, some time for giving notice. Those civil servants who are appointed through *konstitutorial* can be discharged only in a disciplinary way by reason of error or neglect in discharge of their duties, but not on the ground that they are found to be less suited for the service. The civil servants with *fullmakt* can be discharged only through the sentence of a court.

Further, the civil servant is obliged to resign with pension either at a certain age (the rule is sixty-seven years for men, sixty years for women), or before then, in case he becomes permanently ill or suffers an accident which renders him incapable of fulfilling the duties of his office.

In the following selection of documents will be found:

1. Selections from the *Regierungsformen* (constitutional law).
2. Regulation No. 280, June 27, 1927.
3. Law of June 22, 1923, eligibility of women to public office.

DOCUMENT NO. 1

SELECTIONS FROM THE REGIERUNGSFORMEN (CONSTITUTIONAL LAW)[1]

ARTICLE 28

SEC. 1. The king in the council of state shall have power to appoint and promote native Swedes to all offices and positions, high or low, within the kingdom, for which the king's commissions are granted; however, the proper authority shall first submit nominations, if such a practice has heretofore been customary. The king may, likewise, after having taken the advice of the proper authorities or upon their nomination, appoint or promote foreigners of distinguished merit, professing the pure evangelical faith, to professorships in the universities excepting, however, the chairs of theology, to professorships or other positions in other institutions for science, manual training, or fine arts, and as physicians. The king may likewise employ foreigners of unusual ability in the military service, but not as commanders of fortresses. In all appointments the king shall consider only the candidate's merit and ability, and not his extraction. Only persons professing the pure evangelical faith shall be appointed to the office of preacher or to other offices carrying with them the obligation to give instruction in the Christian religion or in theology. To all other offices and positions, excepting membership in the council of state as provided by Article 4, persons belonging to another Christian faith or adherents of the Mosaic belief may be appointed; however, no person not belonging to the pure evangelical faith shall take part, as judge or in any other position, in the discussion or decision of questions relating to divine worship, to religious instruction, or to appointments within the Swedish church. Each chief of a department shall present and conduct all business relative to the appointment, commission, leave of absence, and discharge of all officers and employees in the bureaus and divisions belonging to his department.

SEC. 2. The king shall have power to confer Swedish nationality by means of naturalization, in the manner and upon the conditions to be determined by a special law passed in the manner provided by Article 87, section 1. A naturalized foreigner shall enjoy the same rights and privileges as native-born Swedes except that he may not be appointed to membership in the council of state.

ARTICLE 29

The king shall appoint the archbishop and bishops, one from a list of three candidates presented to him in the manner provided by the church law.

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[1] Translation from Walter F. Dodd, *Modern Constitutions.*

ARTICLE 30

The king shall, in the manner heretofore practiced, appoint the incumbents of the royal benefices. The so-called consistorial benefices shall retain their right of election.

ARTICLE 31

Residents of cities qualified to vote in the election of the Riksdag shall have the right to propose three competent persons, of whom the king shall choose one as mayor. The same principle shall apply to aldermen and city clerks of Stockholm.

ARTICLE 32

Ministers to foreign powers and the officers of legations shall be appointed by the king in the manner prescribed by Article 11 for the conduct of diplomatic affairs.

ARTICLE 33

When the king is to appoint to offices for which nominations are made in advance, the members of the council of state shall express their opinion regarding the aptitude and merit of the candidates; they shall also have the right to make humble representations against the king's appointments to other offices and positions.

ARTICLE 34

The minister of state and the minister for foreign affairs shall have the highest rank in the kingdom, and councilors of state shall rank next. Members of the council of state shall not at the same time perform the duties of, or receive income from, any other office; neither shall a councilor of justice hold any other offices or perform other duties.

ARTICLE 35

Members of the council of state, presidents and heads of administrative boards or of institutions established in their place, the attorney-general, the heads of the prisons, of the surveying service, of the state railroads, of the pilot, postal, telegraph, customs, and forestry services; the undersecretaries of the departments of the government, the governor, deputy-governor, and chief of police of the capital; the governors of provinces, field marshals, generals, and admirals of all grades, adjutants-general, adjutants-in-chief and adjutants of the staff, commanders of fortresses, colonels of regiments, lieutenant-colonels of both cavalry and infantry regiments of guards and of the household guards as well as of other military corps and battalions having a separate organization, the chiefs of artillery, of fortifications, and of the topographical and hydrographic surveys; ministers, envoys, and commercial agents in foreign countries, as well as officers and employees of the king's cabinet for foreign correspondence and of the legations, shall hold their offices during the pleasure of the king, who may remove them whenever he thinks if for the good of the state. He shall, however, make known his action to the council of state, whose members shall make humble remonstrances if they think that they have reason to do so.

ARTICLE 36

Persons occupying judicial positions, higher as well as lower, and all officers or employees other than those mentioned in the preceding article shall not be removed from office by the king, except after trial and judgment; nor shall they be promoted or transferred to other offices, except upon their own application.

DOCUMENT NO. 2

HIS ROYAL MAJESTY'S INSTRUCTIONS FOR THE NATIONAL TREASURY DEPARTMENT GIVEN AT STOCKHOLM PALACE JUNE 27, 1927

The Official Work of the National Treasury Department

PARAGRAPH 1

Art. 1. It is incumbent upon the national treasury department to exercise central supervision over the revenues and expenditures of the state as well as over the management of state property; also in general, in accordance with these instructions or otherwise in accordance with His Royal Majesty's explicit directions, to attend to matters which are connected with the abovementioned supervision.

Art. 2. The national treasury department shall attentively follow developments within the provinces which are delegated to it, as well as propose to His Royal Majesty necessary changes in the statutes and provisions, the application of which it is the duty of the department to supervise; furthermore to give suggestions for new regulations or other measures which the department has found by experience to be necessary.

. . . .

PARAGRAPH 3

The national treasury department may have inventories taken of the funds, of papers of value and of supplies of the departments, of the officials, and of the institutions whose accounts are to be audited in the department, as well as of their subordinate accountants; furthermore it may conduct investigations concerning the departmental accounts, as well as secure information in general concerning the administration and the supervision thereof which may be required for the execution of the duties of the department.

. . . .

The Organization of the National Treasury Department

PARAGRAPH 10

The officers of the national treasury department consist of one director-general, as head of the department, and two assistant undersecretaries, as members of the board and each a head of his own office, i.e., one for the budget office and one for the auditing office.

In the civil service departments there are furthermore employed permanent employees in accordance with the prevailing specifications of the staff list and in addition, according to need and available means, temporary employees.

PARAGRAPH 11

The special bureaus have in the main the following duties:

Budget bureau.—To carry on the financial examination of the accounts sent in to the national treasury department; also to have the supervision in general as prescribed in Paragraphs 3 and 4.

The auditing bureau.—To carry on the central bookkeeping of the national treasury department; formally to examine ledgers sent in to the civil service as well as remittances among the main administrations; furthermore to draw up blank forms for accounts and exercise the supervision of the state finances prescribed in Paragraph 1, Article 3.

Further stipulations about the division of the work among the bureaus are given in the work program of the treasury department. Whenever special circumstances necessitate a deviation from the given regulations concerning the division of labor among the bureaus as well as in doubtful cases, the director-general has the right of deciding to which bureau a certain duty belongs.

PARAGRAPH 12

Further regulations concerning the work within the national treasury department will be announced in its work program.

The director-general also has the right to give special rules as a guide for the employees of the department. Before such rules are issued the director-general is to consult with the bureau heads in the matter.

PARAGRAPH 13

The director-general is first of all responsible to His Royal Majesty for the carrying out of the duties of the national treasury department and sees to it that the staff of the department fulfils its obligations zealously and carefully.

The director-general has the right whenever he finds it advisable to assume the preparation and execution of certain duties or groups of them himself.

. . . .

PARAGRAPH 17

Art. 1. The quorum of the national treasury department consists of the director-general and two bureau heads. Whenever another employee than the bureau head presents business in the quorum, the latter also, as far as the business in question is concerned, becomes a member of the board.

Art. 2. The quorum shall treat and decide matters concerning:

Organization of the department or its abolition.

Issuance of new regulations or alteration of those current.

Circulars or general precepts which come in the province of the department.

Measures for gaining necessary collaboration between the national treasury department and the special budget commissions.

Form and arrangement of accounts.

Drawing-up of proposals for vacancies.

Appointment of those employees in the department who are not appointed by His Royal Majesty.

Employment of the temporary staff.

Division of the staff for service.

Decision of remuneration and gratuities for the temporary staff.

Leaves of absence with the exception of vacations, as well as appointments, resignations, and references.

Departmental employees' faults and neglect in office.

Accounts and proposals which the national treasury department, in accordance with Paragraph 4, Article 2, as well as Paragraph 9, must give.

Imposing or rejecting of fines, verdicts concerning trouble because of the acts or decisions of the department except in cases specified in paragraph 1, Article 4.

Economy.

Other questions which the director-general finds to be of such nature that they ought to be treated by the quorum.

Art. 3. Matters which are treated by the quorum are decided by a vote of those taking part in the decision. In case of divergent opinions, the opinion of the majority prevails or in case of a tie, that which is supported by the director-general.

. . . .

Appointments, Vacations, and Other Holidays, Substitutes and Resignations

PARAGRAPH 29

Art. 1. The director-general is appointed by His Royal Majesty.

Art. 2. Bureau heads are appointed by His Royal Majesty on the nomination of the director-general.

Art. 3. Positions in salaried grades twenty-four and above in Section B of the salary schedule in the salary ordinance (by-laws), with the exception of those mentioned in Article 2, are filled by His Royal Majesty on the nomination of the national treasury department.

Art. 4. The ordinary positions which are not named above are filled by the national treasury department, which also appoints the temporary members of the staff.

Art. 5. The appointments in Section A of the salary schedule in the salary ordinance and in Section B of the same schedule salary grades 21–30 are made by a full appointment. Other ordinary appointments are made by a probationary appointment.

PARAGRAPH 30

Art. 1. When a position the holder of which is appointed by His Royal Majesty on the motion of the national treasury department becomes vacant, the department announces the fact in the public newspapers and by means of notices in the office of the department with the order of thirty days for applying reckoned from the day the announcement is made in the public newspapers. After the expiration of this time, the department sends the applications to His Royal Majesty and also recommends for the position the applicant who is regarded as being preferable, or it advises that such a recommendation cannot be given anyone among the applicants.

After the papers have been sent to His Royal Majesty, the notice of the national treasury department's decision in the matter shall be posted without delay on the premises of the department.

Art. 2. When a position the holder of which is appointed by the national treasury department becomes vacant, it shall be announced in the way mentioned in Article 1 with the requirement of the same time for applying.

After the appointment has been made, the notice of the decision of the department in the matter shall be posted without delay in the offices of the department.

PARAGRAPH 31

The vacation due the director-general may be enjoyed by him at the time he himself decides. In addition to his vacation for special matters he may have leave of absence for a maximum of fifteen days annually, when he finds himself in need thereof. Every time the director-general makes use of his right to leave of absence, he shall announce the time to the head of the finance department and notify the national treasury department.

PARAGRAPH 32

Art. 1. The division of vacations among the employees shall be made by the director-general after deliberation with the bureau heads.

Art. 2. Any other leave of absence than vacation the national treasury department has the right to grant to the bureau head for a maximum of forty-five days annually and to the rest of the staff according to the circumstances; in case of leave for the bureau head for a longer time than the specified one the question shall be referred to His Royal Majesty's decision.

. . . .

PARAGRAPH 34

A request for a resignation from a position in the national treasury department shall, if the position is filled by His Royal Majesty, be sent to His Royal Majesty, but otherwise be considered by the department.

Before a resignation is granted by the department, when there is a question of the right to a pension by the person resigning, such a question shall be considered in the prescribed order.

Indictment and Responsibility for Errors in Discharge of Official Duty

PARAGRAPH 35

Art. 1. If the director-general or the bureau head is accused of errors or negligence in office, the indictment takes place in the lower court of appeal of Stockholm.

Art. 2. If any ordinary employee is guilty of error or negligence in office or disrespect toward his superior or insubordination, the department according to the circumstances has the right either to give him a warning or to sentence him to a loss of salary for a maximum of thirty days, and also to suspend him for a maximum of three months from his office and salary.

In case the offender has not been corrected by such treatment or has been guilty of errors of more serious nature, he shall be placed under indictment before the proper lower court in case the position is filled by permanent appointment, and when the position is filled by probationary appointment, he shall either be indicted as before mentioned or be discharged by the department.

In case measures for the institution of an indictment are taken, the department has the right to exclude the offender from the performance of his duty, until after the final decision has been made or the court decrees otherwise. If the department has adopted a resolution to suspend or dismiss the employee, it also has the right to exclude the offender from the performance of his duty until the decision has become legal.

Art. 3. If the employee who is not referred to in Articles 1 and 2 shows evidence of negligence, incompetency, or reprehensible conduct or if he otherwise appears to be unsuitable, the department has the right to give him a warning or to dismiss him or, in the case of one who has been appointed by His Royal Majesty, to propose to His Royal Majesty his dismissal from office. In more serious faults the indictment occurs before the proper lower court; however, whenever the misdemeanor is committed by the occupant of a position mentioned in Article 1, the indictment occurs before the lower court of Stockholm.

DOCUMENT NO. 3

LAW OF JUNE 22, 1923, ELIGIBILITY OF WOMEN TO PUBLIC OFFICE

With the exceptions stated in this law, women shall have equal rights with men to hold office in the employ of the state.

A special law governs a woman's right to hold a clerical or other church office.

PARAGRAPH 2

ART. 1. The following offices in the employ of the state may not be held by women:

1. Military and civilian military offices as well as such offices outside the military force which involve the obligation to serve in the army or in the navy.
2. Employment in prisons, reformatories, public institutions for alcoholics, or other similar institutions, involving the management or supervision chiefly of males or male minors; however, where special circumstances require, women may hold a position as teacher at the above-mentioned institutions.
3. Employment at insane asylums, involving the duty of taking such care of the insane as should not be performed by women.
4. Employment connected with maintaining public order and safety; women may, however, hold positions in the police force for special tasks.
5. Employment in the customs involving guard duty.
6. Employment in forestry service involving guard duty.
7. Employment involving the duty of giving instruction in gymnastics in secondary schools, or in normal schools for the education of male elementary teachers.

The king will proclaim more precise regulations necessary for the application of the foregoing.

ART. 2. The king has the right to make special stipulations concerning woman's entrance to the office of judge involving the obligation of presiding in the petty courts in the rural districts.

PARAGRAPH 3

Women shall have equal rights with men to hold public offices which are not to be regarded as in the employ of the state; but whenever duties are involved which according to Paragraph 2 prevent a woman's holding a state office, the public office may not be held by a woman.

THE CIVIL SERVICE OF NORWAY

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TEXT OF STATUTE[1]

CHAPTER I. APPOINTMENT

1. DEFINITION OF PUBLIC EMPLOYEE

Under the terms of this law, a public employee is one who is employed in the service of the state or of the commune and who is paid from public funds, excluding temporary appointees, probationers, educational officers, and male and female teachers in the secondary public schools and in the elementary public schools.

In cases of doubt, the king decides who shall be regarded as public employees.

In making decisions, account shall be taken as to whether the position provides the employee's chief means of livelihood or whether it provides only an incidental addition to his private income. The public or private character of the employee's work is also to be taken into consideration.

If a public employee is paid partly by the state and partly by the commune, or county, the king shall decide whether the person concerned shall be regarded as a government or a municipal employee.

2. APPOINTMENT OF GOVERNMENT EMPLOYEES

Unless otherwise specified by law, the king shall decide who shall appoint government employees and the method of appointment.

If the king does not wish to exercise his right of appointment, he may delegate it to a department, board, or appointing council.

If the king has delegated the right of appointment to someone other than the next higher public authority, the latter shall make the nomination.

If someone other than the king has the right of appointment, and the appointing authority in question wishes to appoint someone who has not been nominated, information concerning him shall be sought from the nominating authority. If he is not nominated, and the appointing authority still desires to appoint the person in question, the matter shall be placed before the king, if the right of appointment belongs to a government department or otherwise to an authority determined by the regulations.

4. If in a collegial executive or a board of appointment, there is no agreement on an appointment, each member can demand that the problem be placed before the government department in question or before the authority determined by the regulations. In such a case only one of the persons, concerning whom the appointing authorities had disagreed, can be appointed.

5. At the time of appointment, a letter of appointment is prepared. Copies of what this shall contain are given by the regulations.

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[1] Translated by Mrs. Chester N. Gould.

6. Decisions in Paragraphs 1–5 do not concern officials of the *Stortingets* (parliament) or *statsrevisionens* (auditor of public accounts).

3. APPOINTMENT OF COMMUNAL CIVIL SERVANTS

Where the right to appoint communal civil servants is not established by law, it belongs to the communal council for the communes and to the county court for the county communes.

If the communal council or the county court does not wish itself to exercise the right of appointment, it can be delegated to the selectmen, or to a collegial executive for a branch of the service, or to a board of appointment.

At the time of appointment, a letter of appointment shall be prepared. The contents of the letter of appointment are given in the regulations.

4. PROMOTIONS

In regard to the appointments to state positions, which are not under parliament or the auditor of public accounts, the king decides by ordinance which position in each branch of the service shall be filled according to the prevailing rules of promotion from a lower position or a transfer from a similar position, and which after general competitive examinations or in other manner.

For the villages and the counties, the village council and the county court shall give corresponding decisions.

If a *herred* (hundred, district, division) for any branch of the service shall wish to issue corresponding decisions, the king acts after the government of the district has had opportunity to express itself.

The regulations and the above-mentioned decisions can be modified only by the authority which issued them or with its approval.

. . . .

Chapter III. Committees of Civil Servants

16. THE INSTITUTION OF THE CIVIL SERVANTS' COMMITTEE

A government department may decide that a committee of civil servants shall be set up for a branch of the state service or for certain divisions thereof. The county court or the communal council can decide similarly for a communal branch of the service or for certain divisions thereof.

Before committees are set up, statements are to be secured from the chiefs of the service in question and from trusted representatives of the subordinate staff.

If a branch of the service has at least ten civil servants and the majority of them demand a committee of civil servants, the demand shall be complied with.

17. COMPOSITION OF THE COMMITTEES

The members of the committees of civil servants shall be elected by the civil servants in the branch of the service in question or division of the same. Anyone with the right to vote may be elected, provided he has served at least one year in the branch of the service concerned.

Proportional representation shall be used, provided at least one-fifth of those having the right to vote demand it.

The authority, which has decided that the committee of civil servants shall be set up, can make decisions in regard to the duty to take part in the election and the obligation to act as a committee member, in regard to summons to the meetings of the electors and in regard to the announcement of the meetings. Moreover, the electors themselves set up their standing rules and make decisions concerning the committees' authority and the conduct of business.

Provided at least three committees in the same branch of the service desire, in agreement with their constituents, a joint committee may be established, if the local committees themselves agree on the composition, authority, and the conduct of business.

18. PURPOSE OF THE COMMITTEES

The problem of the civil servants' committees and the joint committees is to take care of the interests of the civil servants in regard to terms of employment and salary, and to express themselves concerning the problems of the service and the conditions of the service.

Regulations may specify that the civil servants' committee and the joint committee shall meet at stated times with representatives from the employers for the purpose of negotiations and inquiries.

Whoever shall represent the employers in the negotiations with the civil servants' committee and the joint committee in the joint meetings according to Paragraph 2 is appointed by instruction, which on behalf of the state is issued by the king or his delegate, for the county by county court and for the commune by the communal council. The authority, which gives instructions, can on each occasion decide that others than those mentioned in the instructions shall act as the representatives of the employers.

CHAPTER IV. DISMISSAL (HONORABLE), MISDEMEANORS, DISMISSAL (DISHONORABLE)

19. DISMISSAL DURING THE FIRST THREE YEARS OF SERVICE (HONORABLE)

A public official with less than three years' service in the branch of the service in question may be dismissed on three months' notice by the appointing authority, unless otherwise provided by law.

If the period of service is less than one year, the notice may be curtailed by regulation to one month.

Rules concerning the determination of the period of service are established by regulation. A civil servant, who is dismissed by other than the king, may appeal within fourteen days after notice of the discharge to the superior authority. Rules concerning this are established by regulation.

20. DISMISSAL AFTER THREE YEARS' PERIOD OF SERVICE (HONORABLE)

A public official can also be dismissed after a three-year period of service if his position is superfluous or is abolished.

The same rule holds when a civil servant assumes a responsible position in operations of the nature of a business or a trade. Positions included under this classification are decided by regulation.

The period of notice is six months. For civil servants with less than a six months' period of service, it may be diminished by regulation to three months.

A dismissed civil servant with at least fifteen years' service may demand within two years as an allowance 60 per cent of his salary. The allowance is not granted if he refuses to assume another official position, which is offered him, which has a salary of at least 80 per cent of the former salary, and which to some extent corresponds to the position he held previously.

If a civil servant with at least a period of fifteen years' service is dismissed, he shall, if possible, be granted the opportunity to receive another position with the same employer, and if it is the state, when possible, in the same branch of the service.

The preceding paragraph applies in regard to the computation of the period of service.

21. "ORDENSSTRAFFE" (PUNISHMENT FOR DISORDERLINESS)

1. A public official, who does not come under the military penal code, may be subject to discipline for misdemeanors in the service or for unseemly or unworthy conduct in or outside of the service.

2. Disciplinary penalties are: (*a*) fines, not in excess of one month's salary; (*b*) extension up to two years of the time necessary to receive salary increments (according to length of service); (*c*) transfer to another position of like or lower grade, so far as is consistent with the terms of appointment.

Increments which are denied, salary which is saved during suspension, and fines shall accrue to an institution the object of which is to benefit public officials or their dependents.

In regard to discipline, the rules in Article 23, first and second items, and in Article 24 receive corresponding application. Disciplinary penalties and reason therefore shall be given in writing. They are imposed by the authority which has the power of appointment. The king can delegate his right to impose disciplinary penalties to the governmental department in question, and the communal council to the selectmen.

22. DISMISSAL (DISHONORABLE)

Unless otherwise provided by law, a public official may be dismissed by the appointing authority:

a) When he shows himself to be permanently unfit to perform his work creditably, or no longer has the necessary or validly prescribed qualifications to hold the position.

b) When he makes himself responsible for a serious indiscretion in the service by a wilful violation of duty in spite of earlier written admonition or reprimand from the immediate superior, shows negligence or slovenliness in the service, has been intoxicated when on duty; or when intoxicated or when engaged in unseemly conduct in or outside of the service, he shows himself to be unworthy of his position or destroys the respect or trust which the position commands.

Besides these cases, a civil servant may be dismissed when he has reached that age or period of service which is or will be established for his right to pension from the public treasury.

23. PROCEDURE OF DISMISSAL

No one may be dismissed unless he has had an opportunity to defend himself in writing before the competent authority. Likewise he has the right to defend himself orally. He shall also have opportunity to be acquainted with the charge and the evidence on which it is based.

If other evidence is advanced and the authority in question cannot without difficulty trace it down, the accused may have it examined by his representative or by another public official, but not by the one who initiated the charge.

An investigation according to the rules of criminal procedure may be demanded by the authority as well as by the civil servant.

The dismissal and the reasons for the same shall be given in writing.

24. APPEAL

A public official who has been dismissed from a government department may appeal to the king. In other cases, discharge from a state position which is not responsible to parliament or to the auditor of public accounts, may be appealed to the authority concerned.

A public official who has been dismissed by an inferior communal authority may appeal, respectively, to the communal council or the county council.

The appeal has the effect of a delay. Rules bearing more directly on cases of appeal, etc., are established by regulations.

Except as provided by law, discretionary decisions concerning discharge cannot be tried by the courts on the question of legality of dismissal.

25. SUSPENSION

A public official may be suspended from the service by the immediate superior, when it is agreed that there is a valid basis for his dismissal and the requirements of the service demand that he be removed. The decision shall be reported without delay to the appointing authority.

The civil servant in question may demand his salary until the decision of the appointing authority has been handed down.

26. PROSECUTION AFTER DISCIPLINARY PENALTY OR DISCHARGE

If a public official has been subject to discipline or dismissal on account of behavior which is punishable according to the penal code, he is not thereby excluded from public prosecution; but in handing down the decision, consideration shall be taken of the disciplinary penalty or dismissal.

27. RIGHT OF THE CIVIL SERVANT TO RESIGN

An official may resign his position on three months' notice provided he is not appointed for a definite period. By regulation the period of notice may be made shorter.

If a group of public officials have resigned, the appointing authority, if it decides that they have acted in concert or by means of an understanding with one another, and the resignation would endanger important community interests, may require them to remain in the service, after the three months' notice has expired, but not over three months.

The requirement may be made within fourteen days after the resignation. An appeal can be taken in conformity with the rules in Article 24, Paragraphs 1 and 2, against this requirement. The appeal does not have the effect of a delay.

28. STRIKES

If public officials by agreement or by means of an understanding with one another have illegally ceased working, they may be discharged without following the procedure provided in Articles 23 and 24.

THE JAPANESE CIVIL SERVICE

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INTRODUCTION[1]

HISTORICAL SKETCH[2]

The year 1885 may be said to mark the beginning of the civil service in Japan.[3] In December, 1885, the cabinet system was instituted and His Excellency Prince Ito, was appointed the first minister president of state. On December 26, 1885, Prince Ito issued the famous instructions to the various ministers of departments on administrative reform. The instructions touched on the following five points of the administration: (1) definition of official responsibilities; (2) principles to be applied in making appointments; (3) multiplicity of official documents; (4) reduction of superfluous expenditures; and (5) official discipline.[4]

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[1] At the outset of this brief Introduction to the civil service in Japan, it is the happy duty of the present translator to make full acknowledgment of the valuable suggestions and assistance so freely given to him by Professor Minobe-Tatsukichi and Professor Royama-Masamichi, of the faculty of law of the Imperial University of Tokyo. He further desires to make special acknowledgment of his indebtedness to Professor Royama for reading through the entire manuscript and giving his expert suggestions and information on the subject. However, for any omission of any important fact to be mentioned or any error, either in fact or judgment, the translator alone is to be held responsible.

Excepting the *Koto Shiken Rei*, or ordinance concerning the higher civil service examination, the original text of which has been taken from the *Kwampo*, or official gazette, the translations have been made from texts taken from *Genko Horei Shuran*, or compilation of laws and ordinances in force (Tokyo, 1927), compiled by the bureau of archives of the secretariat of the cabinet.

So far as the translator is aware, no official translation of any of these documents has been published, and consequently he assumes the full responsibility for any error made in these translations. Imperfect as they are, should the translations of these documents prove to be of any interest to Western students of the subject, inviting further research by competent scholars, the translator's little labor would not have been made in vain.

[2] For a brief discussion on public officials in Japan down to the Restoration of 1868, see Hoshi, *Kanri Gaku*, or official science (Tokyo, 1918–23), I, 79–279. Cf. Wada, *Kanshoku Yokai*, or commentaries on official duties (Tokyo, 1926).

[3] For a very interesting treatise on the evolution of the civil service in Japan down to 1885, see Hoshi, *op. cit.*, pp. 357–1117.

[4] Text of instructions in Yoshino (ed.), *Meiji Bunka Zenshu* (complete works relating to Meiji civilization) (Tokyo, 1928), II, 484–88.

These instructions laid down the guiding principles for the conduct of the administration for many years to come. In view of its particular significance for the evolution of civil service in Japan, we shall quote at length that portion of the instructions relating to appointment:

> There having been no fixed mode of appointing officials, appointments have hitherto fallen to the friends of those already in office; and educated persons thus have been often deprived of all hope for advancement. This of course, is the inevitable consequence of imperfect system concerning appointment. Now, however, ordinances concerning the organization of the various branches of the administration, and the number of officials having been limited, the absence of a definite system of appointment would lead to grave abuses, and make it impossible to obtain the services of able and efficient men in public service.
>
> The establishment of a definite system of appointment being a novelty, more extended rules shall be drawn up by a special committee, and, after receiving the approval of the cabinet, shall be submitted to His Majesty for his sanction. However, the general principles by which the preparation of such rules shall be guided are as follows:
>
> 1. Appointment and promotion shall be by examination.
> 2. Examinations shall be divided into two classes: scientific and ordinary examinations.
> 3. The scientific examinations are subdivided into two classes: elementary and higher examinations.
> 4. In addition to the scientific and ordinary examinations, special examinations may be held (such as examinations in bookkeeping for accounting officials, and in foreign languages for diplomatic officials, and in technical subjects for others).
> 5. Candidates for examination shall be allowed, at their option, to be examined in any special subjects in which they have made special study, although not mentioned in the prescribed scheme; and the examination committee shall make due allowance for such examinations. Those candidates who have obtained high marks will receive certificates of excellence, thus affording every opportunity to the candidates for displaying their ability.
> 6. The examination committee shall be established in the cabinet.
> 7. Rules concerning special examinations to be conducted in the various departments, by permission, shall be determined by mutual agreement between the examination committee and the ministers of departments concerned.
> 8. The selection of officials to be promoted by examinations shall be based on the inquiries made by the examination committee as to their age, character, health, and ability.

9. Successful candidates in the scientific examination will be made *shiho* (probationers) for a certain period of time, during which they will be initiated into official business, or registered in the list of successful candidates.
10. Promotion of *Hannin* officials now in service to the rank of *Sonin* shall be made only after passing, at least, the elementary scientific examination.
11. In case there is either a vacancy among, or a demand for, officials of *Hannin* rank, appointments shall be made by an ordinary examination.
12. Promotion of unclassified officials or employees to those of *Hannin* rank of classified service shall be made only after passing an ordinary examination. Specialists, however, may be promoted without such examination.
13. Officials of *Hannin* rank now in service, attachés of *jun-Sonin* (officials ranking with the *Sonin* class), shall be allowed, at their option, to take the scientific examination.
14. The regulations relating to the examination committee shall be drawn up so as to secure strict discipline and justice.
15. Examinations for the clerks of local governments shall be conducted in accordance with special regulations.

The foregoing is only the tentative outline of the general objects of the system. For the execution of the system, a special committee will be appointed to examine into its details.

And, on official discipline, Ito instructed:

Inasmuch as the character of officials makes or mars the dignity and confidence of the government, and their loyalty, care, industry, and incorruptibility have vital concern to the successful administration of governmental affairs, it is highly important to enforce discipline and order, so as, on the one hand, to consolidate the conduct of official business, and, on the other, maintain high morale among officials.

In 1876, *Kanri Chokai Rei* (ordinance concerning official discipline) was issued. However, the absence of rules for proper supervision and investigation has rendered it inefficient. It is now an inescapable necessity to establish a disciplinary tribunal, and to frame regulations concerning punishment and removal from office, so as to maintain discipline and preserve the honor of officials. The putting into practice of these reforms, however, may not be attempted immediately, inasmuch as they are closely connected with detailed rules and regulations of other governmental organizations.

Nevertheless, it being highly important to maintain discipline and preserve integrity among officials, ministers of departments, meanwhile, should comply with imperial wishes, by encouragement and supervision of officials under their jurisdictions. Whenever any official violates the principles of loyalty and faithfulness, or contravenes the laws, or is careless or lacks indus-

> try in the discharge of his duties, he should be reprimanded or punished according to the degree of his offense. The prohibition concerning accepting presents should be extended to small as well as large ones; disciplinary punishment for the negligence of official duties should be dealt with without giving any allowance as to whether intentional or otherwise; and those who are unable, because of their age, to give efficient service should be discharged from their offices, so that faithfulness, strictness, and efficiency may ever be made the guiding conditions of being in service. Regulations concerning these particulars shall be issued, after obtaining His Majesty's sanction.[1]

Carrying into effect the principles laid down in the foregoing instructions, the system of examinations for appointment of civil officials was instituted in 1887 under the Ito ministry.[2] Up to this time, no special legal restrictions were placed upon the qualifications for appointment of civil officials. Under the new system, however, appointment of *Sonin* and *Hannin* officials was to be made, in principle, by examination, although no restrictions were placed upon the appointment of more important *Chokunin* officials.[3]

The introduction of the system of examination for appointment of civil officials, below those of *Chokunin* rank, was welcomed, at the time, as a signal reform, being regarded as an effective instrument for putting an end to the abuses of favoritism.[1] With the increased influence of political parties on national politics,[2] however, the outcry against "clan government" began to be heard on all sides, and particularly by party politicians. They contended that the existing system was designed to build a stronghold of bureaucracy in officialdom, giving special favors to the graduates of the Imperial University by appointing them to the civil service without any examination.[3]

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[1] On December 23, 1885, Emperor Meiji issued a decree, on the occasion of the establishment of cabinet system, in which he said, in part: "It is our intention to put an end to confusion by clearly defining official responsibilities; to invite the most capable by careful selection; to remove obstruction by doing away with multitudinous documents; to proceed with matters of urgent importance by economizing expenditures; to promote efficiency in government service by strict enforcement of disciplinary rules; and by these means gradually to complete the reorganization of the entire administration" (*Meiji Bunka Zenshu* [Tokyo, 1928], II, 482).

[2] Cf. Imperial Ordinance, No. 37, 1887 (July 23, 1887). Text in *Horei Zensho*, or Complete compilation of laws and ordinances (1887), Vol. I, *Chokurei*, pp. 124–29; Minobe, *Gyoseiho Satsuyo* (Outlines of the administrative law of Japan) (Tokyo, 1927), I, 227.

[3] One reason attributed to leaving the appointment of *Chokunin* officials without any legal restrictions is that, at the time the ordinance was drawn up under the Ito administration, the number of young officials of university education being comparatively few, it would have been impossible to fill the high administrative offices adequately, had rigid restrictions been placed upon qualifications. Moreover, it is to be noted that, even after the number of educated men began to increase, the system was not attended with evil consequences as sound official tradition wisely limited the appointment of *Chokunin* posts to those who have proved their ability by long course of training in lower ranks of the service. Cf. an editorial, "The Civil Service Regulations," *Japan Times*, March 30, 1899, p. 2.

Cabinets, being unable to carry out their administrative policies without the co-operation of the legislative branch of government, and being forced to rely on the support of some dominant parties in the Diet, were gradually forced to give concessions to party demands for offices. Thus, the second Matsukata cabinet (1896), being supported by the Progressive party, was forced to create certain new offices, such as *Chokunin* councilors to departments, and prominent Progressive members were appointed to those posts.

When the first Okuma cabinet was formed in June, 1898,[4] the party politicians found their golden opportunity; but this ministry, the first experiment with party cabinet, soon fell, owing to internal dissensions among the two parties supporting the ministry, over division of the spoils. During the brief period of four months in office, party men, without due regard to their proper qualifications, filled the high posts of *Chokunin* rank, such as the posts of vice-ministers of departments, councilors, chiefs of various bureaus, governors of prefectures, and other important *Chokunin* posts, supervising and controlling *Sonin* and *Hannin* officials, who had been appointed by examinations. The general public, however, even welcomed such a sweeping change in the atmosphere of officialdom as wiping out administrative stagnation.[1]

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[1] Leading article, "Appointment of Officials in Japan," *Japan Weekly Mail*, September 10, 1898, p. 265.

[2] The first imperial Diet met in the winter of 1890.

[3] On this point, see an illuminating article by an anonymous writer in *Taiyo*, XV, No. 8 (June, 1909), 31–39; also Imperial Ordinance No. 37, 1887, Articles 2–4.

Article 2 declared: "Except those who come under Articles 3 and 4 of the present ordinance, appointment to *shiho* or probationers (first *Kotokan* post appointed, after passing the higher civil service examination, to be initiated into the actual business of the office), or to *minarai* or attachés (first *Hanninkan* post appointed, after passing the ordinary civil service examination, to be initiated into the actual business of the office), shall be made only after passing the prescribed examinations as provided for in the present Ordinance. . . . ."

Article 3 provided that graduates of the College of Law, the College of Liberal Arts, and the former Law and Literary Departments of Tokyo were eligible to appointment to *shiho* without taking the higher civil service examination. Article 4 provided, on the other hand, that the graduates of public secondary schools or private law schools under supervision of the Imperial University were eligible to appointment to *Hanninkan minarai* without taking the ordinary civil service examination.

Imperial Ordinance No 183, 1893, however, repealed the foregoing ordinance, thus removing the obvious favors granted under the said ordinance to the graduates of the Imperial University and other public schools.

[4] This first Okuma cabinet is said to be the first party cabinet in Japan, being a coalition ministry of two dominant political parties.

The second Yamagata ministry which followed the Okuma *Kenseito* cabinet, having seen the complete breakdown of administrative discipline and morale among officials, immediately took steps to prevent its repetition. This superparty ministry, headed by Prince Yamagata, was able to carry through the thirteenth Diet with *Kenseito* support. Naturally, as soon as the Diet was closed, the ministry had to face the persistent demands of party leaders for rewards. Faced with such situation created by the rise of political parties, Yamagata now determined to place a check upon the ever persistent demands of party politicians for offices. This determination soon found its expression in the issuance of three important ordinances. They were: (1) a radically revised ordinance concerning the appointment of civil officials, placing strict restrictions upon qualifications for *Chokunin* posts, hitherto left free to party leaders; (2) *Bunkan Bungen Rei*, or ordinance concerning the status of civil officials, giving greater guaranty of status and security of tenure to civil officials; and (3) *Bunkan Chokai Rei*, or ordinance concerning the disciplinary punishment of civil officials.[2] These three basic ordinances relating to civil service were directly aimed at the rising influence of political parties and the ever increasing army of office-hunters without due regard to their qualifications.[1]

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[1] Imperial Ordinance No. 257, 1898 (October 22, 1898). For comments by vernacular press on this point, see *Japan Weekly Mail*, October 29, 1898, p. 428.

[2] The first *Bunkan Ninyo Rei*, or ordinance concerning the appointment of civil officials, was issued in 1893, Imperial Ordinance No. 183, 1893 (October 30, 1893), *Kwampo*, October 31, 1893. Yamagata established a precedent by submitting these

During the next ten years, no serious attempt was made either by party statesmen or cabinets to amend these several ordinances relating to civil service, to widen the field of selection of officials by loosening the very rigid restrictions placed by ordinances issued under Yamagata administration. It remained for the first Yamamoto cabinet, in 1913, to tackle this much-needed reform.

Under the first Yamamoto cabinet, the eligible military and naval officers for the posts of ministers of war and the navy were extended. The cabinet draft of the revised *Bunkan Ninyo Rei* met violent opposition at the hands of the privy council, and its special committee, after having met in seven conferences, came to a compromise draft. Finally, the extraordinary meeting of the privy council, held on the morning of July 28, 1913, gave unanimous approval to the draft as amended by the committee.[2]

The next important stage in the evolution of the system of civil service in Japan is during the Hara administration.[3] The Terauchi ministry fell in the summer of 1918, and Hara headed the new ministry. He was president of *Seiyukai*, the majority

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drafts to the deliberations of the privy council, the stronghold of Japanese bureaucracy and conservatism.

[1] Imperial Ordinance Nos. 61, 62, 63, 1899 (March 28, 1899). Text in *Horei Zensho* (1899), Vol. I, *Chokurei*, pp. 68–78. The press comment was not, of course, unanimous on these newly issued ordinances. Party organs were in united opposition to the "reforms," but the independent press welcomed the new ordinances. Cf. *Japan Times*, March 31, 1899, p. 2.

[2] It is interesting to note that Prince Yamagata, who was responsible for placing rigid restrictions upon *Chokunin* officials in 1899, was now president of the privy council.

For several articles by leading jurists and party leaders in condemnation of the attitude of the privy council toward the government draft, see *Taiyo*, XIX, No. 11 (August, 1913), 109–28, and also an anonymous article in *Chuo Koron*, No. 295 (August, 1913), pp. 1–13.

[3] In the early part of 1918, under the Terauchi ministry, revisions of the ordinances concerning civil service examinations were made, *Koto Shiken Rei* and *Futsu Shiken Rei.*

party in the lower house of the Diet,[1] and was naturally expected to introduce some important modifications in the existing ordinances concerning the civil service, giving expression to the fundamental principles of party government which was about to become an institution in the constitutional history of Japan. Having the majority support in the lower house and having no serious opposition in the upper house, Hara set to work to modify the *Bunkan Ninyo Rei* to widen the field of selection of officials in civil service.

In 1919, the draft of revised ordinance was completed and submitted to the Privy Council for deliberation. As in the case of the first Yamamoto cabinet, some six years ago, the Hara draft revision met a strong opposition in the Council. After remaining in the Council for a year, a revised ordinance was issued in May, 1920, the leading features of which had been radically modified at the hands of the Privy Council. The revised ordinance opened several *Chokunin* posts to candidates, without restrictions upon qualifications, abolished the office of parliamentary councilors, and extended the field of selection of officials of lower ranks.[2]

Since the revision made under the Hara administration in 1920, several unsuccessful attempts were made under the Wakatsuki and Tanaka ministries to open more civil posts to party men.[3] The only tangible result of these attempts was the rather significant revision of the *Koto Shiken Rei* (ordinance concerning the higher civil service examination) made in March, 1929, under the Tanaka administration.[1] The cardinal feature of this revised ordinance is that it rejected the previous principle of legal omnipotence, and gave room for social sciences in general, by reducing the compulsory subjects to four and by giving wider discretion to the candidates in selecting three optional subjects.[2]

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[1] The Hara cabinet may be said to be really the first party cabinet in Japan, and he was the first non-titled statesman to head a ministry in her history. The formation of his cabinet was hailed as the dawn of new democracy, and a signal victory for the principles of parliamentarism in Japan.

[2] For a general outline of Hara revision, see *Jiji Nenkan* (1921), p. 115.

[3] In 1925, *Gyosei Chosakai* (committee of inquiry on administrative reform) was established to make special investigation into the labor law, revision of the *Bunkan Ninyo Rei*, and other administrative reforms. In the early part of September, 1926, a revised draft of the *Bunkan Ninyo Rei* was completed by the committee, and received the approval of the cabinet. The Wakatsuki draft greatly extended the field of selection of *Chokunin* and *Sonin* officials, to be appointed upon the recommendation of the higher civil service examination. The Wakatsuki draft revision of *Koto Shiken Rei* decreased the compulsory subjects for the higher civil service examination, and extended the number of optional subjects (*Jiji Nenkan* [1927], p. 777).

When the Tanaka ministry was formed in April, 1927, *Gyosei Chosakai* was abolished and, instead, *Gyosei Seido Shingikai* (committee on administrative reorganization)

To summarize the evolution of the civil service in Japan: (1) The foundation was laid in 1887, under the first Ito administration, in that the examination system for appointment of civil officials, except those of *Chokunin* rank, was established. (2) In 1899, under the Yamagata ministry, the entire civil service, including the *Chokunin* posts, was placed under restrictions. The entire civil service was given greater guaranty of status and security of tenure. (3) With the rise of political parties in national politics, and establishment of party government, the inevitable tendency has been gradually to relax the restrictions placed upon the qualifications for appointment of civil officials, especially those of *Chokunin* rank, by placing an increasing number of posts outside the operation of various restrictive ordinances, and by increasing the number of officials to be appointed upon the recommendation of the higher civil service examination committee.

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was instituted under the chairmanship of the minister president, Baron Tanaka, himself. This new committee proceeded to draft new ordinances concerning appointment, status, and examination. Although this committee completed drafts on appointment, status, and examination, it saw no hope of pushing through its drafts without receiving some damaging amendments at the hands of the privy council; the Tanaka administration concentrated its efforts on the passage of the revised ordinance concerning the higher civil service examination only (*ibid.* [1929], pp. 138–40).

[1] The Tanaka government took measures to refer the draft revision of the *Koto Shiken Rei* to the deliberation of the privy council, in the fall of 1928. After mutual concessions on the part of the council and the administration, the present revised ordinance concerning the higher civil service examination was promulgated in March, 1929 (*ibid.* [1930], p. 148).

[2] The revision of 1929 of the ordinance concerning the higher civil service examination is the first radical revision since its promulgation in 1889, although minor revisions were made in 1918.

CIVIL SERVICE OF TODAY

Having seen the general outline of the evolution of the civil service in Japan, we are now in position to inquire into the operation of the system at the present time. In a brief Introduction of this nature, it would be impossible for the translator to give any discussion of the legal aspect of the subject.[1] In this introduction, therefore, we shall confine our attention to a very general discussion on (1) classification of officials, (2) appointment of officials, and (3) personnel administration.

I. CLASSIFICATION OF OFFICIALS

Officials in Japan may be divided into two classes: (1) military and naval officials, and (2) civil officials.[2] The primary difference between these two classes of officials is that different rules are applicable to these two distinct classes of officials.[3] In this Introduction, we shall confine our discussion to civil officials.[4]

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[1] For legal treatises on officials from the standpoint of the administrative law of Japan, see Minobe, *Gyoseiho Satsuyo* (outlines of administrative law of Japan) (Tokyo, 1927), I, 214–69; Oda, *Gyoseiho Kogi* (lectures on administrative law of Japan) (Tokyo, 1917), I, 345–406; Shimizu, *Gyoseihen* (administrative law) (Tokyo, 1920), pp. 297–588; and Sasaki, *Nihon Gyoseiho Ron* (administrative law of Japan) (Tokyo, 1924), pp. 132–228.

[2] Shimizu, *op. cit.*, p. 315. The civil service in Japan may be divided into classified and unclassified services. The classified service includes *Chokuninkan*, *Soninkan*, and *Hanninkan* officials, while the unclassified service includes clerks, employees, and agents (*zoku*, *koin*, *yonin*). These unclassified service employees are governed by departmental ordinances and regulations having no security of position or status as in case of classified officials.

It may be more correct to say that Japanese officials may be divided into three large categories: military and naval officials, imperial court officials, and civil officials.

Local governors are, formally, non-political officials, but in practice they are regarded as political officials, in view of their significance in parliamentary elections. So whenever there is a change in the ministry, it is accompanied by changes in local governors.

The establishment, during the Kato administration, of the office of parliamentary vice-minister in each department was designed to give offices to those party leaders disappointed in not being appointed to high posts when their party comes into power.

[3] Sasaki, *op. cit.*, p. 143.

[4] Inasmuch as imperial court officials are governed under imperial house ordinances, and are independent from civil officials in appointment, salaries, disciplinary punishment, etc., we shall exclude them from our discussion.

Officials, in formal sense, may be divided into three classes: *Chokuninkan*, *Soninkan*, and *Hanninkan*. *Chokuninkan* and *Soninkan* are called *Kotokan*, or higher officials.[1] Except those who are appointed by His Majesty the emperor in person (*Shinninkan*), the officials of *Kotokan* are divided into nine grades. Those who are appointed by His Majesty in person and the first and second grades are called *Chokuninkan* officials, while the remaining seven grades are called *Soninkan* officials.[2] The *Hanninkan* are divided into four grades.[3]

II. APPOINTMENT[4]

Appointment of civil officials is made, in principle, by examination.[5] Appointment as well as dismissal of officials of *Sonin* rank are recommended by the minister president of state, and in case such officials belong to any particular department or office thereunder, the minister of the department concerned recommends them through the medium of the minister president of state,[1] and the first appointment to *Sonin* rank cannot be above the sixth grade.[2]

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[1] Minobe, *op. cit.*, p. 221.

[2] *Kotokan Kanto Hokyu Rei* (ordinance concerning the grades and salaries of higher officials), Art. 1.

[3] *Bumbu Hanninkan Tokyu Rei* (ordinance concerning the grades and salaries of military and civilian officials of *Hannin* rank), Art. 1.

[4] Appointment of officials belongs to the appointment prerogative of the emperor (Constitution, Art. X). Cf. references cited in Note 1, p. 524.

The forms of appointment of *Kotokan* officials are provided for in *Koshiki Rei* (ordinance concerning the forms of public documents), Arts. 14 and 15.

[5] These examinations are qualification examinations and not appointment examinations. However, in the case of examination for the diplomatic branch of the higher civil service examination, only those who are to be appointed are declared successful candidates. In other two branches, those who make sixty or above are all declared successful.

In conducting the examinations, the examiners are absolutely free as to what questions are to be asked. Oral examination on a subject takes about fifteen minutes.

Those officials who are appointed by His Majesty in person and those officials enumerated in Imperial Ordinance No. 262, 1913, are outside any restrictive ordinances, and constitute an important group of exceptions to the general rule.

The second group of exceptions include those officials that require special knowledge, technical skill, and experience, and are appointed upon the recommendation of the higher civil service examination committee.

The third group of exceptions are those for whose appointment special regulations are provided for.

Although there is no express law or ordinance prohibiting aliens from serving as Japanese officials, Professor Minobe holds that, from the fundamental nature of her law, aliens, in the absence of special law, ordinance, or treaty stipulation, are ineligible to civil offices in Japan. See his article in *Kokka Gakkai Zasshi*, XXIII, No. 11 (November, 1909), 1639–44.

As to the procedure in making appointments, there is no unanimity among the various branches of the administration. Usually, however, whenever appointments are to be made, a committee on appointments, composed of bureau chiefs and confidential secretaries, is formed to deal with such cases.[3]

III. PERSONNEL ADMINISTRATION

All matters relating to personnel administration of officials of a department are dealt with in the secretariat of the department.[4]

Promotion of civil officials is dependent almost solely upon their supervising officials, that is, the only important basis for promotion of civil officials is the impression they make upon the superior officials in supervision.[5]

Before closing our brief commentary on the civil service in Japan, attention is directed to the fact that such questions as efficiency, prestige, or morale have attracted little or no public interest, indicating that the officials have been, on the whole, efficient, morale well maintained, and prestige high.[6] However, with the ever increasing state functions and governmental activities in recent years, such problems as economy in expenditures, efficiency in service, and welfare administration of the government employees have increased their importance both to the administrators and to the general public.[1]

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[1] *Kotokan Kanto Hokyu Rei*, Art. 2.

[2] *Ibid.*, Art. 4. There is no such provision in case of *Hanninkan* officials.

[3] Appointment of *Chokunin* officials of importance is discussed in the cabinet before the prime minister makes his recommendation to His Majesty.

[4] In both the department of justice and the department for foreign affairs, a section on personnel is established and such a section is found in some other departments, but by no means uniformly. In appointment, confidential secretaries of the department are quite influential, while in promotion after getting into service, the personnel section is influential.

[5] There is no ordinance concerning recruitment or promotion of civil officials, although there is a very elaborate ordinance regulating promotion and recruitment of military officials.

[6] Until very recently, only the legal aspect of the subject has been emphasized to the total neglect or disregard of the technical or managerial aspect of the administration. Discussion on pensions, official duties, etc., has been omitted entirely from this Introduction, as they are similar in most countries. It is to be noted, however, that, although the entire aspect of the civil service in Japan is governed by ordinances, pensions are regulated by statutes (Law No. 48, 1923).

There are several departmental organizations of employees, but no interdepartmental organizations or groups affiliated with labor unions. Highly elaborate welfare administration, in addition to the well-disciplined official traditions, has tended to compromise their ever increasing class consciousness.

These documents follow:

1. *Kakusho Kansei Tsusoku* (the organization of departments).
2. *Bunkan Ninyo Rei* (the appointment of civil officials).
3. *Koto Shiken Rei* (the higher civil service examination).
4. *Futsu Shiken Rei* (the ordinary civil service examination).
5. *Koto Shiken Oyoki Futsu Shiken I-In Kansei* (the examination committees).
6. *Bunkan Bungen Rei* (status of civil officials).
7. *Kanri Fukumu Kiritsu* (the personal conduct of officials).
8. *Bunkan Chokai Rei* (discipline).

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[1] Bureaucracy as an institution has broken down largely under the increasing influence of political parties and democratization of educational institutions, which, in turn, has tended to introduce again the "spoils system" into the civil service.

DOCUMENT NO. 1

KAKUSHO KANSEI TSUSOKU[1] (ORDINANCE CONCERNING THE ORGANIZATION OF THE RESPECTIVE DEPARTMENTS: REGULATIONS APPLICABLE TO THE RESPECTIVE DEPARTMENTS IN COMMON)

ARTICLE 1

The present regulations shall apply to the following respective departments: department for foreign affairs, department for home affairs, department of finance, department of war, department of the navy, department of justice, department of education, department of agriculture and forestry, department of commerce and industry, department of communications, department of railways, department of overseas affairs.

ARTICLE 2

The ministers of the respective departments shall be held responsible for all matters that fall within their competence.

A matter that may fall within the competence of two or more departments shall be laid before the cabinet to determine the competent minister.

ARTICLE 3

The ministers of the respective departments shall, when deemed necessary, lay before the cabinet drafts of laws or imperial ordinances, of repeal or amendment of the same, when they concern matters falling within their competence.

ARTICLE 4

The ministers of the respective departments may, by virtue of their official powers or by special delegation, issue departmental ordinances concerning matters falling within their competence.

ARTICLE 5

The ministers of the respective departments may, in respect to matters falling within their competence, issue orders or instructions to the commissioner of the metropolitan police board, the governor of the Hokkaido, and the governors of prefectures (*Ken* and *Fu*).

ARTICLE 6

The ministers of the respective departments shall, in respect to matters falling within their competence, supervise the commissioner of the metropolitan police board, the governor of the Hokkaido, and the governors of prefectures (*Ken* and *Fu*).

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[1] Imperial Ordinance No. 122, 1893. Issued on October 31, 1893. Amended several times since. Text in *Genko Horei Shuran* (1927), Vol. I, Bk. III, p. 13.

Whenever any order issued, or measure determined upon, by the commissioner of the metropolitan police board, the governor of the Hokkaido, or a governor of a prefecture (*Ken* or *Fu*), is deemed to be in conflict with existing laws or ordinances, or with the public interest, or to overstep the legal limits of the functionary powers of any such official, a competent minister may order the suspension of such order or measure, or the rescision thereof.

ARTICLE 7

The ministers of the respective departments shall have control over all the officials of their individual departments. The appointment or dismissal of all officials of, and above, the *Sonin* rank, shall, through the medium of the minister president of state, be submitted to His Majesty the emperor for sanction. The appointment or dismissal of officials of, and below, the *Hannin* rank, shall be made by the competent ministers concerned.

The appointment or dismissal of all the local officials of the *Sonin* rank (*chiho kancho Soninkan*) shall, through the medium of the minister president of state, be submitted to His Majesty the emperor for sanction, by the minister of state for home affairs.

ARTICLE 8

The ministers of the respective departments shall, through the medium of the minister president of state, submit to his Majesty the emperor for sanction, all proposed bestowals of ranks or decorations upon officials under their control.

The bestowals of ranks or decorations upon local officials shall be made in accordance with the provisions of Section 2 of the preceding article.

ARTICLE 9

[Rescinded.]

ARTICLE 10

A minister's secretariat shall be established in each department.

The minister's secretariat shall be in charge of the following matters:

1. Matters relating to secret affairs.
2. Appointment, dismissal, and supervision of officials.
3. The custody of the minister's official seal and of the seal of the department.
4. Receipt and forwarding of all official documents or final drafts.
5. Preparation of statistical reports.
6. Compilation and preservation of official documents.
7. Matters relating to the estimates, accounts, and actual expenditures of the department.
8. Inspection of actual expenditures.
9. Matters relating to the management of official properties of the department.

10. In addition, those matters that may be placed under the minister's secretariat under provisions provided for in the organization of each department.

According to the convenience of each individual department, the duties of the minister's secretariat may be discharged in several bureaus or special bureaus may be established to discharge them.

ARTICLE 11

[Rescinded.]

ARTICLE 12

Bureaus shall be established in each department to take charge of the business of the department. The matters to be placed under each bureau shall be provided for in the particular organization of the department.

ARTICLE 13

The various sections of bureaus and of the minister's secretariat shall be determined by the minister of each department.

The various sections of the departments of war and of the navy shall be determined by the organizations of these individual departments.

ARTICLE 14

In each department, there shall be the following functionaries: *Seimu Jikan* (parliamentary vice-minister), *Jikan* (vice-minister), *Sanyokan* (councilor), *Kyoku-cho* (directors of bureaus), *Hishokan* (confidential secretaries), *Shokikan* (secretaries), *Zoku* (clerks).

ARTICLE 14 (PART II)

There shall be one parliamentary vice-minister, to be of *Chokunin* rank, in each department.

ARTICLE 14 (PART III)

A parliamentary vice-minister shall assist the minister of the department, participate in the formulation and determination of the affairs of state, and be in charge of matters relating to communications with the imperial Diet.

ARTICLE 15

There shall be a vice-minister of state, to be of *Chokunin* rank, in each department.

ARTICLE 16

A vice-minister of state shall assist the minister, regulate the business of his department, and supervise the affairs of each bureau.

ARTICLE 17

There shall be one councilor, to be of *Chokunin* rank, in each department. A councilor shall, under the direction of the minister, participate in matters relating to communications with the imperial Diet and other affairs of state.

ARTICLE 18

There shall be one director, to be of *Chokunin* rank, in each bureau. A director shall, under the direction of the minister, attend to all matters falling within his bureau, and shall direct and control the affairs of all sections of his bureau.

ARTICLE 19

[Rescinded.]

ARTICLE 20

[Rescinded.]

ARTICLE 21

Confidential secretaries shall be of *Sonin* rank and shall, under the direction of the minister, attend to matters of confidential character, or shall assist, under special order of the minister, in the conduct of the business of sections or bureaus.

ARTICLE 22

Secretaries shall be of *Sonin* rank, and shall, under the direction of the minister, attend to the affairs of the minister's secretariat, or assist in the conduct of the business of bureaus.

ARTICLE 23

There shall be one confidential secretary on full service, to be of *Chokunin* rank, in each department.

ARTICLE 24

A chief, to be a *Kotokan* official, shall be appointed to each section of the minister's secretariat and of a bureau, and shall be in charge of the business of the section under direction.

Chiefs of sections in the departments of war and the navy shall be determined by the separate organizations of those departments.

ARTICLE 25

Clerks shall be of *Hannin* rank, and shall engage in general affairs, under direction.

ARTICLE 26

[Rescinded.]

ARTICLE 27

When, in addition to those enumerated in the present regulations, any special functionaries are required in any of the respective departments, provisions shall be made in the particular organization thereof.

The fixed number of sections, clerks, and those functionaries mentioned in the foregoing clause shall be determined in accordance with the particular organization of a department.

APPENDED RULES

The present ordinance shall become operative on November 10, 1893.

DOCUMENT NO. 2

BUNKAN NINYO REI (ORDINANCE CONCERNING THE APPOINTMENT OF CIVIL OFFICIALS)[1]

ARTICLE 1

The appointment of civil officials shall be made in accordance with the present ordinance, with the exception of those officials appointed by His Majesty the emperor in person and those for whose appointment special provisions have been made.[2]

ARTICLE 2

Civil officials of *Chokunin* rank (*Chokunin bunkan*) shall be appointed from among those who possess the qualifications specified in Clause 1 of Article 5 of the present ordinance and who have either held a post as civil official of *Chokunin* rank for not less than one year, or, as a civil official of *Sonin* rank, a post as higher civil official of the third grade (*Kotokan santo*) for not less than two years.[3]

ARTICLE 3

Those who do not possess the qualifications specified in Clause 1 of Article 5, but who have either held a post as civil official of *Chokunin* rank for not less than two years, or, as a civil official of *Sonin* rank, a post as higher civil official of the third grade for not less than two years, may be appointed, upon the recommendation of the higher civil service examination committee, to positions in the civil service of *Chokunin* rank.

ARTICLE 3 (PART II)

The following civil officials of *Chokunin* rank may be appointed, upon the recommendation of the higher civil service examination committee, from among those possessing the necessary knowledge, technical skill, and experience, although not possessing the qualifications specified in the two foregoing articles: director of the government iron works, director of the reconstruction bureau, financial commissioners abroad, director of the monopoly bureau, director of the government printing office, director of the mint, division chiefs of the monopoly bureau, director of Senju woolen factory, director of the monopoly bureau of the government-general of Taiwan.

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[1] Imperial Ordinance No. 261, 1913. Issued on August 1, 1913. Amended several times since. Text of the ordinance in *Genko Horei Shuran* (1927), Vol. I, Bk. III, p. 349.

[2] The following officials are excluded from the application of the present ordinance: chief secretary of the cabinet, director of the bureau of legislative affairs, parliamentary vice-ministers of the various departments, councilors of the various departments, chief of the police affairs bureau of the home office, commissioner of the metropolitan police board, chief secretary to the house of peers, chief secretary to the house of representatives, and secretaries (Imperial Ordinance No. 262, 1913, Art. 1).

[3] Except those appointed by His Majesty the emperor in person (*Shinninkan*), the grades of higher civil officials (*Kotokan*) are divided into nine classes. Those appointed by His Majesty and emperor in person and the first and the second grades are officials of *Chokunin* rank, while the remaining seven grades are of *Sonin* rank (Imperial Ordinance No. 134, 1910, Art. 1).

ARTICLE 4

Generals and admirals of the military and naval service may be appointed to posts of civil officials of *Chokunin* rank in their respective departments.

ARTICLE 5

Civil officials of *Sonin* rank shall be appointed from among those who possess one of the following qualifications:

1. Those who have passed the examination for the administrative branch of the higher civil service examination.[1]
2. Those who have passed the examination for the diplomatic branch of the higher civil service examination, and who have served for not less than two years as diplomatic or consular officials.
3. Those who have served for not less than two years as judges or public procurators.
4. Those who possess the qualifications to be a judge, public procurator, or a *shihokan shiho*,[2] under the provisions of the law concerning the organization of courts of justice, and who have served for not less than two years, as military judicial officers (*rikugun homukan*), naval judicial officers (*kaigun homukan*), judges or public procurators of the government-general of Chosen, of the government of the South Sea Islands, of the government-general of Taiwan, or of the government of Kwantung Leased Territory

Those who have served as instructors of *Sonin* rank for not less than two years may be appointed as civil officials of *Sonin* rank in the department of education.

ARTICLE 6

Civil officials of *Hannin* rank shall be appointed from among those who possess one of the following qualifications:

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[1] Those who have passed the *Bunkan Koto Shiken*, or the civil service higher examination, shall be regarded as having passed the *Koto Shiken gyoseika shiken*, or the administrative branch of the higher civil service examination (Imperial Ordinance No. 10, 1918).

[2] *Shihokan shiho* refers to a probationary judge or public procurator, the first position received immediately after passing the examination for the judicial branch of the higher civil service examination.

1. Those who have graduated from a *chugakko*,[1] or other educational institutions recognized by the minister of state for education not inferior to a *chugakko*.
2. Those who are qualified to take the preliminary examination under Article 7 of the ordinance concerning the higher civil service examination.
3. Those who have finished the entire course of three years of those schools where law, politics, administrative science, or economics are taught, in accordance with the ordinance concerning colleges.
4. Those who have passed the ordinary civil service examination.
5. Those who have passed the higher civil service examination.
6. Those who have held a post of civil official for not less than two years.
7. Those who have been employees for not less than four years.

ARTICLE 7[2]

Instructors, technical experts, and other civil officials requiring special scientific or artistic knowledge may be appointed as *Kotokan* civil officials, upon the recommendation of the higher civil service examination committee, and, as *Hannin* officials, upon the recommendation of the ordinary civil service examination committee.

Presidents of schools may be appointed in accordance with the preceding clause.

APPENDED RULES

This ordinance shall become operative upon promulgation.

Those who are qualified to enter the civil service under previous regulations may be appointed in accordance with said regulations.

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[1] A *chugakko* may be literally translated as a "middle school" and corresponds to a high school in the United States.

[2] The purport of this article is carried out in ordinances relating to special appointment of *Sonin* and *Hannin* officials. See Imperial Ordinances Nos. 160, 357, 1920.

DOCUMENT NO. 3

KOTO SHIKEN REI (ORDINANCE CONCERNING THE HIGHER CIVIL SERVICE EXAMINATION)[1]

We, with the advice of our privy council, hereby give our sanction to the present ordinance concerning the higher civil service examination and order it to be promulgated. (Countersigned by the minister president of state, ministers of state for foreign affairs, for justice, and for education.)

ARTICLE 1

The qualification examinations for the appointment of civil officials of *Sonin* rank, those of the diplomatic and consular service, as well as the examination provided in Article 48 of the law concerning the organization of courts of justice, are called *Koto Shiken* (higher civil service examinations), and are conducted in accordance with the provisions of the present ordinance, except as already otherwise provided.

ARTICLE 2

The higher civil service examination shall be held annually in Tokyo, the date and place of which shall be announced in *Kwampo* (official gazette).

The main examinations in each branch of the service shall be held on separate days.[2]

ARTICLE 3

Those persons who come under any of the following clauses shall be disqualified from taking the higher civil service examination: (1) those who have been sentenced to graver punishment than imprisonment; (2) those who have been declared bankrupt or insolvent and who have not yet been definitely rehabilitated.

ARTICLE 4

The higher civil service examination is divided into the preliminary examination and main examination.

Only those who have passed the preliminary examination shall be qualified to take the main examination.

ARTICLE 5

The object of the preliminary examination is to determine whether the candidate possesses the knowledge sufficient to take the main examination.

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[1] Imperial Ordinance No. 7, 1918. Issued on January 18, 1918. Amended by Imperial Ordinance No. 15, 1929 (March 27, 1929). Text in *Kwampo*, or official gazette, March 28, 1929, pp. 766–68.

[2] See Art. 9 following.

ARTICLE 6

The preliminary examination shall be in essay-writing and foreign language.

The foreign language examination shall be in either English, French, or German, as designated by the candidate in advance. However, upon the request of the candidate, a foreign language other than those enumerated in the foregoing may be substituted.

ARTICLE 7

With the exception of those who have graduated from a *chugakko*[1] or other educational institution recognized by the minister of state for education not inferior to a *chugakko*, or educational institutions abroad recognized by the higher civil service examination committee to be, in general education, not inferior to a *chugakko*, the candidates for the preliminary examination shall be those who have passed the examinations in Japanese, Chinese classics, history, geography, mathematics, as well as physics and chemistry, conducted on equal footing as graduates of a *chugakko* and in accordance with regulations issued by the minister of state for education.

ARTICLE 8

Graduates of a *kotogakko kotoka*,[2] the preparatory department of a university, or those who are judged by the minister of state for education to possess equal educational training with those mentioned in the foregoing, are exempt from the preliminary examination.

Those who have passed the preliminary examination are exempt from further like examination.[3]

ARTICLE 9

The object of the main examination is to determine whether the candidate possesses the necessary knowledge as well as ability to apply it to concrete situations.

ARTICLE 10

The main examination is conducted in three separate branches of civil service: administrative, diplomatic, and judicial.

A candidate may take examinations in more than two branches of the service, conjointly.

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[1] A *chugakko* corresponds to a high school in the United States.

[2] A *kotogakko* is divided into two divisions: *jinjoka* and *kotoka*. It takes four years to be graduated from *jinjoka*, and takes three additional years to complete the *kotoka*. A *chugakko* corresponds to the *jinjoka*, or a high school in the United States. *Kotogakko kotoka*, therefore, corresponds to the first three years of a college in the United States. See Imperial Ordinance No. 389, 1918 (December 6, 1918).

[3] For regulations in pursuance of Arts. 7 and 8, see Department of Education Ordinance No. 3, 1918.

ARTICLE 11

The main examination consists of oral and written examinations. Only those who have passed the written examination shall be qualified to take the oral examination.

ARTICLE 12

The written and oral examinations in civil law, commercial law, criminal law, law of civil procedure, law of criminal procedure, bankruptcy law, and other subjects, when deemed necessary by the examiner, shall be conducted showing the text of the law concerned to the candidate.

ARTICLE 13

The written examination for the administrative branch shall be held in compulsory and optional subjects as follows:

Compulsory subjects: (1) constitutional law, (2) administrative law, (3) civil law, (4) economics.

Optional subjects: (1) introduction to philosophy, (2) ethics, (3) logic, (4) psychology, (5) sociology, (6) political science, (7) national history, (8) political history, (9) economic history, (10) Japanese literature and Chinese classics, (11) commercial law, (12) criminal law, (13) international public law, (14) law of civil procedure, (15) law of criminal procedure, (16) public finance, (17) agricultural policy, (18) commercial policy, (19) industrial policy, (20) social policy.

Three of these optional subjects shall be designated in advance by the candidate.

The oral examination for the administrative branch shall be held in administrative law, and two other subjects to be designated by the candidate from among those in which he has taken the written examination.

ARTICLE 14

The written examination for the diplomatic branch shall he held in compulsory and optional subjects as follows:

Compulsory subjects: (1) constitutional law, (2) international public law, (3) economics, (4) foreign language. As to foreign language, the candidate shall designate in advance one of the following: English, French, German, Chinese, or Russian. Upon the request of the candidate, other foreign languages may be offered in addition to that which has been designated by him.

Optional subjects: (1) introduction to philosophy, (2) ethics, (3) logic, (4) psychology, (5) sociology, (6) political science, (7) national history, (8) political history, (9) economic history, (10) diplomatic history, (11) Japanese literature and Chinese classics, (12) civil law, (13) commercial law, (14) criminal law, (15) administrative law, (16) international private law, (17) public finance, (18) commercial policy, (19) commercial science.

Three of these optional subjects shall be designated in advance by the candidate.

The oral examination for the diplomatic branch shall be held in a foreign language (that designated for the written examination), international public law, and two other subjects to be designated by the candidate from among those in which he has taken the written examination.

ARTICLE 15

The written examination for the judicial branch shall be held in compulsory and optional subjects as follows:

Compulsory subjects: (1) constitutional law, (2) civil law, (3) commercial law, (4) criminal law, (5) law of civil procedure or law of criminal procedure (one of these to be designated in advance by the candidate).

Optional subjects: (1) introduction to philosophy, (2) ethics, (3) logic, (4) psychology, (5) sociology, (6) national history, (7) Japanese literature and Chinese classics, (8) administrative law, (9) bankruptcy law, (10) international public law, (11) law of civil procedure or law of criminal procedure (whichever has not been designated for the written examination), (12) International private law, (13) economics, (14) social policy, (15) criminal policy.

Two of these optional subjects shall be designated in advance by the candidate.

The oral examination for the judicial branch shall be held in three subjects to be designated by the candidate from among those in which he has taken the written examination. One of these three subjects, however, must be either criminal law or civil law.

ARTICLE 16

Of the optional subjects mentioned in the foregoing three articles, the scope of psychology, sociology, political history, economic history, or other subjects, when deemed necessary, may be determined by a cabinet ordinance.

ARTICLE 17

Those who pass the written examination in one of these branches of the service may be exempted, upon the request of the candidate, from the like examination the following year only.[1]

ARTICLE 18

In case a candidate, having passed the main examination for one branch of the service, desires to take the main examination in another branch, he may be exempted, upon his request, from taking examinations in those subjects in which he has already been examined. He shall, however, be required to take the examination in administrative law if he is a candidate for the main examination for the administrative branch, international public law if he is a candidate for the diplomatic branch, and in either civil law or criminal law (to be designated by him) if he is a candidate for the judicial branch.

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[1] That is, if a candidate passes the written examination for the administrative branch and fails to take the oral examination in 1928, he may be exempted, upon his request, from another written examination only in 1929.

ARTICLE 19

The method of determining the successful candidates shall be decided upon by the higher civil service examination committee.

ARTICLE 20

Certificates shall be issued to those who have passed the higher civil service examination.

ARTICLE 21

Those who attempt to take the examination by improper methods or those who violate the rules and regulations relating to the higher civil service examination shall be prohibited from proceeding in the examination, and, if such violation is discovered after the certificate had been issued, such certificate shall be declared void.

Those who come under the foregoing clause may be disqualified from taking the higher civil service examination for a certain period, not exceeding three years.

ARTICLE 22

Candidates for the higher civil service examination shall pay a fee of 15 yen for the main examination in one branch of the service.

ARTICLE 23

Detailed rules and regulations concerning the higher civil service examination shall be determined by cabinet ordinances.[1]

APPENDED RULES

The present ordinance shall become operative on April 1, 1929.[2]

When a person who has passed the written examination for one branch under the previous provisions takes the oral examination in accordance with Article 17 of the present ordinance, if commercial history be included among those subjects in which he has been examined in his written examination, it shall be regarded as a subject for the written examination under the present ordinance.

Those who have passed the *Bunkan Koto Shiken* (civil service higher examination) shall be regarded as having passed the examination for the administrative branch under the present ordinance.

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[1] Detailed rules and regulations for the execution of *Koto Shiken Rei* were issued on February 28, 1918. Cabinet Ordinance No. 1, 1918. Amended several times since. Text in *Genko Horei Shuran* (1927), Vol. I, Bk. III, pp. 383–84.

[2] Prior to the revision of the *Koto Shiken Rei* in 1929, it was stated that "the present Ordinance shall become operative on March 1, 1918."

DOCUMENT NO. 4

FUTSU SHIKEN REI (ORDINANCE CONCERNING THE ORDINARY CIVIL SERVICE EXAMINATION)[1]

ARTICLE 1

Excepting those specially provided otherwise, the qualification examination for the appointment of civil officials of *Hannin* rank is called *Futsu Shiken* (ordinary civil service examination), and is conducted in accordance with the provisions of the present ordinance.

ARTICLE 2

The ordinary civil service examination shall be held as needed by the government establishment concerned, under the direction of the ordinary civil service examination committee of such establishment. The date and place of the examination shall be announced in *Kwampo* (official gazette). In case the examination is to be held elsewhere than in Tokyo, the foregoing information shall be published in the local press, in addition to the announcement in *Kwampo*.

ARTICLE 3

Candidates for the ordinary civil service examination shall pay a fee of 2 yen.

ARTICLE 4

The ordinary civil service examination shall be held in not less than five subjects taught in a *chugakko*, and the standard of such subjects shall be that of a graduate of a *chugakko*.

To meet the particular conditions of the office concerned, new subjects may be added to those mentioned in the preceding clause.

The subjects referred to in the two foregoing clauses shall be determined by the ordinary civil service examination committee concerned, and shall require the approval of the higher civil service examination committee.

ARTICLE 5

The provisions of Articles 3, 18–20 of the *Koto Shiken Rei* shall be applied to the ordinary civil service examination.

ARTICLE 6

Detailed rules and regulations concerning the ordinary civil service examination shall be determined by the ordinary civil service examination committee.

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[1] Imperial Ordinance No. 8, 1918. Issued on January 18, 1918. Text in *Genko Horei Shuran* (1927), Vol. I, Bk. III, p. 385.

APPENDED RULES

The present ordinance shall become operative on March 1, 1918.

In case the date and place of *Bunkan Futsu Shiken* or civil service ordinary examination shall have been announced prior to the date of coming into force of the present ordinance, such examination shall be held in accordance with said announcement.

DOCUMENT NO. 5

KOTO SHIKEN OYOBI FUTSU SHIKEN I-IN KANSEI (ORDINANCE CONCERNING THE ORGANIZATION OF THE HIGHER CIVIL SERVICE AND ORDINARY CIVIL SERVICE EXAMINATION COMMITTEES)[1]

CHAPTER I

THE HIGHER CIVIL SERVICE EXAMINATION COMMITTEE

ARTICLE 1

The higher civil service examination committee shall be placed under the control of the minister president of state and shall be in charge of matters relating to the higher civil service examination, those relating to the appointment of higher civil officials, and those matters provided for in the ordinance concerning the ordinary civil service examination.

ARTICLE 2

The higher civil service examination committee shall be composed of the chairman, directors of divisions, standing and temporary members.

ARTICLE 3

The higher civil service examination committee is divided into the following three divisions:

The first division shall be in charge of matters relating to the examination for the administrative branch of the higher civil service examination, to examinations not belonging to other divisions, and to all other matters not relating to other divisions.

The second division shall be in charge of matters relating to the examination for the diplomatic branch of the higher civil service examination, and those relating to the selection and appointment of diplomatic and consular officers.

The third division shall be in charge of matters relating to the examination for the judicial branch of the higher civil service examination.

ARTICLE 4

The chairman of the committee shall be the chief of the bureau of legislative affairs.

The director of the first division shall be the chairman of the committee, while directors of the second and third divisions shall be the vice-minister of state for foreign affairs and the vice-minister of state for justice, respectively.

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[1] Imperial Ordinance No. 9, 1918. Issued on January 18, 1918. Amended several times since. Text in *Genko Horei Shuran* (1927), Vol. I, Bk. III, p. 4.

ARTICLE 5

The chairman of the committee shall supervise the officials and govern all matters relating to the committee. The director of each division shall superintend matters falling in his own division.

ARTICLE 6

There shall be eight standing members. The standing members shall be appointed, in cabinet, upon the recommendation of the minister president of state, from among the *Kotokan* civil officials of the various departments.[1]

The standing members shall belong to one of the divisions of the committee, and be in charge of matters relating to the higher civil service examination committee.

ARTICLE 7

The temporary members shall be appointed, in cabinet, upon the recommendation of the minister president of state, from among the *Kotokan* officials of the various departments, and also from among recognized scholars.

Those temporary members who are not *Kotokan* officials shall be treated as *Chokunin* or *Sonin* officials, and shall be subject to the provisions of the *Kanri Fukushoku Kiritsu.*[2]

The temporary members shall belong to one of the divisions and shall engage in matters relating to examinations.

ARTICLE 7 (PART II)

There shall be councilors attached to the higher civil service examination committee.

The councilors shall be appointed, in cabinet, upon the recommendation of the minister president of state, from among the *Kotokan* officials of the various departments.

The councilors shall, upon consultation by the chairman of the committee, state their opinions concerning the appointment of instructors, technical experts, and other *Kotokan* officials requiring special scientific or artistic knowledge.

ARTICLE 8

There shall be standing and temporary secretaries for the purpose of conducting the business of the higher civil service examination committee.

There shall be ten standing secretaries. Two of these secretaries shall be on full service, and shall be officials of *Hannin* rank, while eight shall be appointed, in cabinet, from among the officials of *Hannin* rank of the various departments.

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[1] That is, candidates for appointment to this committee are chosen from among the higher civil officials of the various departments, by the minister president of state, who, upon receiving the sanction of His Majesty the emperor, makes in cabinet the necessary appointments.

[2] Imperial Ordinance No. 39, 1887. Issued on July 30, 1887. This ordinance is concerned with the rules and regulations governing the personal conduct of officials while in public service. See the text of this ordinance in *Genko Horei Shuran* (1927), Vol. I, Bk. III, pp. 446–47.

Temporary secretaries shall be appointed, in cabinet, from among the officials of the various departments as needed at the time of the examination.

The secretaries shall engage in general affairs under direction.

CHAPTER II. THE ORDINARY CIVIL SERVICE EXAMINATION COMMITTEE

ARTICLE 9

There shall be an ordinary civil service examination committee in each *kancho*.[1] The committee shall be under the control of the *chokan*[2] of such *kancho*, and shall be in charge of matters relating to the ordinary civil service examination, and to the appointment of civil officials of *Hannin* rank.

ARTICLE 10

The ordinary civil service examination committee shall be composed of the chairman and members.

ARTICLE 11

The chairman and members of the ordinary civil service examination committee attached to a central office (*chuo kancho*) shall be appointed by the *chokan* from among the *Kotokan* officials of such office, while in the case of a local office (*chiho kancho*), appointments shall be made from among the officials of such office, or from among the instructors of public schools.

ARTICLE 12

The chairman shall supervise the officials of the committee, and govern all matters relating to the ordinary civil service examination committee.

ARTICLE 13

There shall be secretaries for the purpose of conducting the business of the committee, appointed by the *chokan* from among the officials of *Hannin* rank of such office.

The secretaries shall engage in general affairs under direction.

APPENDED RULES

The present ordinance shall become operative on March 1, 1918. However, the provisions relating to the third division of the higher civil service examination committee shall not become operative until March 1, 1923.

The ordinances concerning the organization of the *Bunkan shiken I-in* (civil service examination committee) and of the examination committee for the consular and diplomatic service are hereby repealed.

Upon the execution of the present ordinance, the present chairman, members, and secretaries of the civil service ordinary examination committee (*Bunkan Futsu Shiken I-in*) shall hold the corresponding offices under the present ordinance, except those given certificates of dismissal.

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[1] *Kancho* means a government office and refers to an administrative establishment.

[2] *Chokan* means the chief executive official of a *kancho*.

DOCUMENT NO. 6

BUNKAN BUNGEN REI (ORDINANCE CONCERNING THE STATUS OF CIVIL OFFICIALS)[1]

ARTICLE 1

This ordinance shall apply to civil officials in general, with the exception of those officials to be appointed by His Majesty the emperor in person, ministers to foreign states, confidential secretaries, and others, for whose appointment special provisions have been made.

ARTICLE 2

Civil officials shall not be deprived of their posts except as a result of criminal sentence passed by a court of law, or of a disciplinary measure, or in accordance with the present ordinance.

ARTICLE 3

Civil officials may be removed from their posts, when they come under any of the following clauses:

1. When, in consequence of physical deformity or incurable disease, or in consequence of weakness of body or mind, they become incapable of discharging their duties.
2. When, in consequence of incapacity for the discharge of their duties as a result of injuries or illness, or from consideration of their personal convenience, they request, of their own accord, to be relieved of their offices.
3. When, in consequence of administrative reorganization or modification in the fixed number of staff officials, redundant posts have resulted.

Cases coming under Clause 1 of the present article shall be referred to the examination and inquiry of the higher civil service disciplinary committee when *Kotokan* civil officials are concerned, and to the ordinary civil service disciplinary committee when officials of *Hannin* rank are concerned.

ARTICLE 4

Officials shall be considered as having automatically retired from their offices in case of abolition of their offices or of the administrative establishments concerned.

ARTICLE 5

Upon the expiration of the term of temporary retirement (*kyushoku*) ordered in accordance with the provisions of Clauses 3 and 4 of Section 1 of

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[1] Imperial Ordinance No. 62, 1899. Issued on March 28, 1899. Amended by Imperial Ordinance No. 156, 1903. Text in *Genko Horei Shuran* (1927), Vol. I, Bk. III, pp. 428–29.

Article 11, the officials concerned shall be considered as having automatically retired from their posts.

ARTICLE 6

No official may be transferred, against his own wishes, to another post of lower rank.

ARTICLE 7

The higher civil service disciplinary committee shall have two consulting physicians.

Temporary consulting physicians may be added in case of necessity for the purpose of examination and inquiry.

ARTICLE 8

The ordinary civil service disciplinary committee shall have temporary consulting physicians.

ARTICLE 9

The disciplinary committee shall consult the opinions of the consulting physicians previous to their examination and inquiry under this ordinance.

ARTICLE 10

The disciplinary committee, in conducting examinations and inquiries under Clause 2 of Article 3 of the present ordinance, shall apply the provisions of Articles 12, 13, 24, 25, 29–34 of the *Bunkan Chokai Rei,* or the ordinance concerning the disciplinary punishment of civil officials.

ARTICLE 11

Civil officials may be placed on the *kyushoku* list (suspended list) when they come under any of the following clauses:

1. When, in accordance with the provisions of the *Bunkan Chokai Rei,* they are referred to the disciplinary committee for examination and inquiry.
2. When accused or informed against in connection with a criminal case.
3. When, in consequence of administrative reorganization or modification in the fixed number of staff officials, redundancy has occurred.
4. When their retirement is made necessary because of business arrangements in their offices.

As for cases coming under the provisions of Clauses 1 and 2 of the present article, the period of suspension shall be coextensive with the period they are in the hands of either a disciplinary committee or of a court of law; while those coming under the provisions of Clauses 3 and 4, the period shall be two years with *Kotokan* officials and one year with *Hanninkan* officials.

ARTICLE 12

Those who are placed on the suspension (*kyushoku*) list may not engage in their official duties as such officials. In other respects, however, they are the same as officials in actual service.

Those who have been placed on *kyushoku* list under Clauses 3 and 4 of

Section 1 of the preceding article may at any time be reinstated in their original posts when such action is deemed advisable by the chief executive official in supervision and control (*honzoku chokan*).[1]

ARTICLE 13

Those who have been placed on the suspension (*kyushoku*) list shall be entitled to one-third of their full salary.

ARTICLE 14

Dismissals from offices shall be made with the sanction of His Majesty the emperor, upon the recommendation of the minister president of state, when *Chokunin* officials are concerned, and upon the recommendation of the competent chief executive officials concerned (*honzoku chokan*), through the medium of the minister president of state, when *Sonin* officials are concerned.

The placing of *Chokunin* officials on the suspension list shall be done with the sanction of His Majesty the emperor, upon the recommendation of the minister president of state, while that of *Sonin* officials shall be made by the chief executive officials concerned, with the approval of the minister president of state.

The same procedure shall be followed when a reinstatement is to be made.

ARTICLE 14

This ordinance shall become operative on April 10, 1899.

The *Kanri Hishoku Jorei* (regulations concerning the retirement of officials), Imperial Ordinance No. 286, 1890, and all the other ordinances in conflict with the provisions of the present ordinance shall become inoperative on the day when this ordinance becomes operative.

ARTICLE 16

The provisions relating to temporary retirement as provided for in Clause 4 of Section 1 of Article 11 of the present ordinance shall be applied to those who have been placed on the *hishoku* or *kyushoku* list and who have not yet completed the full term of such orders, issued under the provisions of the *Kanri Hishoku Jorei*, or Imperial Ordinance No. 286, 1890. However, Article 13 of the present ordinance is outside such application.

ARTICLE 17

The term *kyushoku* as is used in the present ordinance may be regarded as synonymous with *hishoku* in other ordinances.[2]

[1] *Honzoku chokan* means the chief executive official of an administrative establishment.

[2] *Kyushoku* may be most conveniently translated as suspension or temporary retirement, although this translation does not convey the original Japanese meaning. *Hishoku* may also be conveniently translated as retirement from service.

DOCUMENT NO. 7

KANRI FUKUMU KIRITSU (REGULATIONS CONCERNING THE PERSONAL CONDUCT OF OFFICIALS)[1]

ARTICLE 1

Officials shall regard loyalty and diligence to the emperor and to His Majesty's government as of primary duty, and shall discharge their duties in obedience to laws and ordinances.

ARTICLE 2

Officials shall, with respect to their official duties, be obedient to their superior officers. They may, however, state their opinions concerning such orders as may be issued by their superior officers.

ARTICLE 3

Officials, whether in connection with official duties or otherwise, shall have high sense of honor, and shall not commit an act of cupidity.

Officials, whether in connection with official duties or otherwise, shall not abuse their authority, but shall always endeavor to be prudent and courteous in their conduct.

ARTICLE 4

Officials, in office or after retirement, shall not divulge official secrets, whether relating to their official duties or learned from other officials.

When they have been asked concerning a confidential official matter, as witnesses or experts, upon summons of a court of law, they may depose only with respect to those matters concerning which they have received permission so to do from the chief executive officials concerned.

ARTICLE 5

Officials shall not privately make known to interested persons documents which have not yet been officially issued.

ARTICLE 6

Unless by permission of the chief executive officials concerned, officials may not freely absent themselves from their official duties, or live in places elsewhere than the official place of abode.

ARTICLE 7

Except with permission of the chief executive officials concerned, an official may not become president or officer of a business concern.

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[1] Imperial Ordinance No. 39, 1887. Issued on July 30, 1887. Text in *Genko Horei Shuran* (1927), Vol. I, Bk. III, pp. 446–47.

ARTICLE 8

Except with permission of the chief executive officials concerned, officials may not receive, in connection with their official functions, any present whatever from others, be it as an acknowledgment of service rendered, as a fee, or in any other name or under whatever pretext.

Officials shall obtain the sanction of His Majesty the emperor in case they receive decorations, honors, salaries, or bequests, from foreign princes or governments.

ARTICLE 9

Officials having direct connection with those enumerated here shall not accept dinners tendered by them: (1) contractors for government enterprises, (2) those who handle government funds, (3) those who undertake enterprises receiving government subsidies, (4) dealers of government articles and commodities, (5) those who make various contracts with government offices.

ARTICLE 10

Superior officials, whether in connection with their official duties or otherwise, shall not receive bequests from their subordinate officials.

ARTICLE 11

Except with permission of the chief executive officials concerned, officials and their families shall not engage in business, directly or indirectly.

ARTICLE 12

Officials shall not be members of firms engaged in exchange speculations, nor shall they have any connection, directly or indirectly, with speculative business whatsoever.

ARTICLE 13

Except with permission of the chief executive officials concerned, officials shall not engage in other business for compensation, in addition to their official duties.

ARTICLE 14

Officials who become insolvent by extravagance or who contract debts above their means are guilty of fault.

ARTICLE 15

Officials shall not accept free passes from private mail steamship companies or private railway companies.

ARTICLE 16

Heads of divisions of an office, such as bureau chiefs and others, shall supervise officials under their respective jurisdictions, and shall endeavor to give warning to them, in case their faults are not within the categories subject to disciplinary action. In case, however, offenses are deemed subject to disciplinary action, the same shall be reported to the chief executive officials concerned, together with the material evidence. A deliberate failure, on the part of such superior officials, to report such cases shall constitute an offense.

ARTICLE 17

The present regulations shall apply to *Kotokan*, *Hanninkan*, and all those who are engaged in the public service receiving salaries.

DOCUMENT NO. 8

BUNKAN CHOKAI REI (ORDINANCE CONCERNING THE DISCIPLINARY PUNISHMENT OF CIVIL OFFICIALS)[1]

CHAPTER I

GENERAL RULES

ARTICLE 1

Excepting those officials appointed by His Majesty the emperor in person or those for whom special provisions have been made, officials may not be subject to disciplinary punishment unless in accordance with the present ordinance.

ARTICLE 2

Officials may be subject to disciplinary punishment when they come under any of the following provisions: (1) When they have acted contrary to, or neglected, their official duties; (2) when, whether in connection with the discharge of their official duties or otherwise, they have committed acts that might impair official prestige or confidence.

ARTICLE 3

The forms of disciplinary punishment are as follows: (1) *Menkan*, or removal from office, (2) *Gempo*, or reduction of salary, (3) *Kenseki*, or reprimand.

ARTICLE 4

Those who have been reprimanded by the disciplinary punishment of removal (*menkan*) shall not be appointed to an office for two years.

In graver cases of *menkan*, the officials so disciplined may be divested of their honors.

ARTICLE 5

The reduction of salary shall be from one month to one year, and the amount of such reduction shall not exceed one-third of the monthly salary.

ARTICLE 6

Dismissals and reduction of salaries of *Chokunin* officials shall be submitted to His Majesty for sanction, by the minister president of state, together with the decisions of the disciplinary committee. Dismissals of *Sonin* officials shall be submitted to His Majesty for sanction, by the chief executive officials concerned, through the minister president of state, together with the decisions of disciplinary committee.

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[1] Imperial Ordinance No. 63, 1899. Issued on March 28, 1899. Amended several times since. Text in *Genko Horei Shuran* (1927), Vol. I, Bk. III, pp. 434–35. For the ordinance governing the disciplinary punishment of the officials of the imperial court, see *Koshitsu Rei*, No. 16, 1907. Disciplinary measures concerning judges of ordinary courts of law are regulated by statutes. See Law No. 68, 1890, and amended by Law No. 10, 1913. Text in *Genko Horei Shuran* (1927), Vol. I, Bk. III, pp. 440–41.

Reduction of salaries of *Sonin* officials, and dismissals and reduction of salaries of *Hannin* officials, shall be dealt with by the chief executive officials concerned, according to the decisions of the disciplinary committees.

Reprimand shall be dealt with by the chief executive officials concerned.

ARTICLE 7

While a case, to be referred to the disciplinary committee, is in a criminal court, the committee may not hold deliberations concerning the same.

In case a criminal action has been instituted against a person subject to disciplinary punishment, prior to the decision by the disciplinary committee, the committee shall suspend its deliberations until a decision is rendered in court.

CHAPTER II

DISCIPLINARY COMMITTEES

SECTION I. GENERAL RULES

ARTICLE 8

Disciplinary committees are of two kinds: *Bunkan Koto Chokai Iinkai*, or civil officials' higher disciplinary committee, and *Bunkan Futsu Chokai Iinkai*, or civil officials' ordinary disciplinary committee.

ARTICLE 9

The civil officials' higher disciplinary committee and civil officials' ordinary disciplinary committees shall deliberate upon the disciplinary punishment of *Kotokan* officials and *Hanninkan* officials, respectively.

SECTION II. CIVIL OFFICIALS' HIGHER DISCIPLINARY COMMITTEE

ARTICLE 10

The civil officials' higher disciplinary committee shall be composed of a chairman and six members.

ARTICLE 11

The chairman of the committee shall be appointed, upon the recommendation of the minister president of state, from among the privy councilors, while the members shall be appointed, upon the recommendation of the minister president of state, from among the chief judge and *Chokunun* judges of the administrative court, *Chokunin* judges of ordinary courts of law, and other civil officials of *Chokunin* rank.

There shall be six deputy members in the committee, to be appointed in the manner provided for in the preceding clause.

ARTICLE 12

The deliberations of the committee cannot be opened, unless five or more members, including the chairman, are present.

Debates in the committee shall be decided by a majority of the members present. In case of equal division of the votes, however, the chairman shall have the deciding vote.

ARTICLE 13

In case the chairman is prevented from discharging his functions by unavoidable circumstances, the senior member shall perform the functions of the chairman in his stead.

In case a member is prevented from discharging his functions by unavoidable circumstances or a vacancy is caused in the committee, the chairman shall order a deputy member to act for such member or to fill the vacancy.

ARTICLE 14

The term of office of the member or deputy member shall be three years.

A member or deputy member appointed to fill a vacancy shall hold such office for the unexpired term.

ARTICLE 15

The chairman and the members of the committee shall be relieved of their offices when they come under any of the following provisions: (1) when they lose their offices, (2) when they are transferred to a new post where no committee exists.

ARTICLE 16

There shall be a manager in the committee.

ARTICLE 17

The manager shall be appointed, upon the recommendation of the minister president of state, from among the *Kotokan* officials.

ARTICLE 18

The manager shall, under the direction of the chairman, prepare the deliberations of the committee, and manage the general affairs.

ARTICLE 19

There shall be three secretaries in the committee.

ARTICLE 20

The secretaries shall be appointed by the chairman from among the *Hanin* officials.

ARTICLE 21

The secretaries shall engage in general affairs under the direction of the manager.

SECTION III. CIVIL OFFICIALS' ORDINARY DISCIPLINARY COMMITTEE

ARTICLE 22

Civil officials' ordinary disciplinary committees shall be established in the following offices (*kancho*): (1) cabinet, (2) privy council, (3) various departments, (4) government-general of Chosen, (5) government-general of Taiwan, (6) government of Kwantung Leased Territory, (7) government of Saghalien, (8) government of the South Sea Islands, (9) board of audit, (10) administrative court, (11) metropolitan police board, (12) government of the Hokkaido, (13) prefectural offices (*Fu* and *Ken*), (14) local offices of the government-general of Chosen, (15) local offices of the government-general of Taiwan, (16) secretariat of the house of peers, (17) secretariat of the house of representatives.

In addition to those enumerated in the foregoing, the ministers of the various departments may establish, when deemed necessary, ordinary disciplinary committees in offices under their respective jurisdictions.

ARTICLE 23

The chairmen of the various ordinary disciplinary committees shall be the *chokan* of each *kancho*.[1] However, the chairmanship of such committee shall be filled by the director of the bureau of legislative affairs in the case of the cabinet, chief secretary in the case of the privy council, vice-ministers in the case of the various departments, commissioner-general of political affairs in the case of the government-general of Chosen, director-general in the case of the government-general of Taiwan, and the chief of the bureau of internal affairs in the case of the government of Kwantung Leased Territory.

The committee shall be composed of from two to six members, to be appointed by the chief executive officials concerned, from among the *Kotokan* officials of the *kancho* concerned. However, in the case of the cabinet, appointment shall be made from among the *Kotokan* officials of the bureau of decorations, of the bureau of legislative affairs, and from among the *Kotokan* officials belonging to the cabinet.

Under special conditions, *Kotokan* officials of higher *kancho* may be appointed to committees of lower *kancho*.

ARTICLE 24

The deliberations of the committee cannot be opened unless the chairman and two committee members are present.

ARTICLE 25

In case the chairman is prevented from discharging his duties by unavoidable circumstances, the senior member shall perform the functions of the chairman in his stead.

ARTICLE 26

There shall be two secretaries in the committee.

ARTICLE 27

The secretaries shall be appointed by the chairman from among the *Hanninkan* officials of the *kancho* concerned.

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[1] A *chokan* refers to the chief executive official of a *kancho*. *Kancho* refers to a government office, or an administrative establishment.

ARTICLE 28

The secretaries shall engage in general affairs under the direction of the chairman.

CHAPTER III

PROCEDURE FOR DISCIPLINARY ACTION

ARTICLE 29

When the chief executive official considers that an act committed by an official under his control constitutes an act subject to disciplinary action, he shall make a written request, together with supporting evidence, to the disciplinary committee of the *kancho* concerned to make examination and inquiry into the matter.

ARTICLE 30

When a request, as provided for in the preceding article, has been made, the chairman shall call the meeting of the committee on such day as he may determine.

The disciplinary committee, when it deems necessary, may require the personal appearance of the individual under investigation at the meeting of the committee.

In the case mentioned in the preceding clause, however, reasonable traveling expenses shall be paid out of the fund of the *kancho* concerned, according to the official rank of the individual in question.

ARTICLE 31

When a decision has been reached by the committee, the same shall be reported, together with reasons for reaching such decision, to the chief executive officials of the *kancho* concerned.

ARTICLE 32

The chairman and the members of the committee may not participate in deliberations over matters relating to themselves or to their relatives.

ARTICLE 33

The procedure for the examination and inquiry of the committee shall be determined by the committee itself.

APPENDED RULES

ARTICLE 34

Kotokan probationers shall be regarded as *Kotokan* officials, and *Hanninkan* probationers as *Hanninkan* officials, for the purpose of the provisions of the present ordinance.

ARTICLE 35

The present ordinance shall become operative on April 10, 1899.

The *Kanri Chokai Rei* (ordinance concerning official discipline) shall become non-operative on the date the present ordinance shall become operative.

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